

10-21-2013

# Boyd-Davis v. Baker Clerk's Record v. 5 Dckt. 40438

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2 121

**SUPREME COURT  
OF THE  
STATE OF IDAHO**

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S.C. #40438-2012

**TERRI BOYD-DAVIS and BRIAN F. DAVIS  
husband and wife; and JEAN L. COLEMAN,  
an individual;**

*Plaintiffs / Counter-defendants / Respondents,*

vs.

**TIMOTHY BAKER and CAROL BAKER,  
husband and wife;**

*Defendants / Counterclaimants / Appellants,*

**MARY PANDREA, an individual; JOHN  
PANDREA, an individual; and DOES 1-50  
INCLUSIVE;**

*Defendants*

and

LAW CLERK

**JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife;**

*Defendants / Counterclaimants.*

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**CLERK'S RECORD ON APPEAL**

*Appealed from the District Court of the First Judicial District  
of the State of Idaho, in and for the County of Bonner.*

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Terri Boyd-Davis

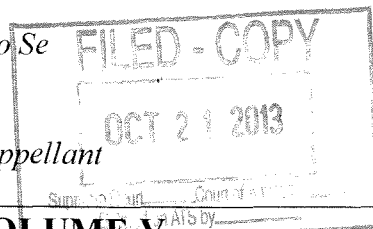
*Plaintiff In Pro Se*

D. Toby McLaughlin

*Attorney for Appellant*

VOLUME V

40438



IN THE SUPREME COURT OF THE STATE OF IDAHO

TERRI BOYD-DAVIS,  
Plaintiff-Counter Defendant-Respondent-Cross Appellant,

And

BRIAN F. DAVIS and JEAN L. COLEMAN, an individual,  
Plaintiffs-Counter Defendants-Respondents,

vs.

TIMOTHY BAKER and CAROL BAKER, husband and wife,  
Defendants-Counter Claimants-Appellants-Cross Respondents,

And

MARY PANDREA, an individual; JOHN PANDREA, an individual; and DOES 1-50,  
inclusive,  
Defendants,

And

JAMES GILBERTSON and Nellie GILBERTSON, husband and wife,  
Defendants-Counter Claimants.

---

Appealed from the District Court of the First Judicial  
District of the State of Idaho, in and for Bonner County

HONORABLE STEVE VERBY  
District Judge

---

MR. D. TOBY MCLAUGHLIN  
Attorney for Appellant

PRO SE  
Attorney for Respondent

## TABLE OF CONTENTS

Cover Page .....	Vol. I 1A
Clerk's Record on Appeal .....	Vol. I 1B-1C
Table of Contents .....	Vol. I 1D-1N
Index .....	Vol. I 1M-1V
ROA's.....	Vol. I 1-37
Verified Complaint to Quiet Title and for Injunctive Relief filed April 19, 2010 .....	Vol. I 38-50
First Amended Verified Complaint to Quiet Title, for Damages for Timber Trespass and Common law Trespass and for Injunctive Relief filed April 27, 2010 .....	Vol. I 51-68
Affidavit of Jean L. Coleman in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed April 30, 2010 .....	Vol. I 69-77
Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed April 30, 2010 .....	Vol. I 78-116
Notice of Motion and Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed April 30, 2010 .....	Vol. I 117-133
Affidavit of Brian F. Davis in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary injunction filed May 3, 2010 .....	Vol. I 134-148
Notice of Appearance filed May 4, 2010.....	Vol. I 149-150
Notice of Appearance filed May 12, 2010.....	Vol. I 151-152
Answer and Counterclaim of Defendant Pandrea filed May 18, 2010 .....	Vol. I 153-158
Notice of Appearance filed May 18, 2010.....	Vol. I 159-160
Defendants/Counterclaimant Gilbertson's Answer to Plaintiffs' Amended First Amended Complaint, Affirmative Defenses and Counterclaims filed May 19, 2010.....	Vol. I 161-171



## TABLE OF CONTENTS

Defendant Mary Pandrea's Answer to First Amended Complaint and  
Counterclaim filed May 20, 2010 .....Vol. I 172-179

Stipulation and Order of Dismissal with Prejudice  
filed May 26, 2010 .....Vol. I 180-182

Order Restraining Entry Onto Disputed Property by Defendants  
Mary Pandrea, Nellie Gilbertson and James Gilbertson  
filed May 27, 2010 .....Vol. I 183-187

Order Granting Plaintiffs' Motion for Temporary Restraining Order  
filed May 27, 2010 .....Vol. I 188-192

## VOLUME II

Defendants/Counterclaimant Baker's Answer to Plaintiffs' Amended  
First Amended Complaint, Affirmative Defenses and Counterclaims  
filed June 7, 2010..... Vol. II 193-202

Defendants/Counterclaimant Gilbertson's Amended Answer to  
Plaintiffs' Amended First Amended Complaint, Affirmative Defenses  
and Counterclaims filed June 7, 2010..... Vol. II 203-211

Notice of Motion and Motion for Order Authorizing Publication in Lieu  
of Personal Service on Out-Of-State Defendant John Pandrea  
filed June 23, 2010..... Vol. II 212-215

Affidavit of Terri Boyd-Davis in Support of Motion for Order  
Authorizing Publication in Lieu of Personal Service on Out-Of-State  
Defendant John Pandrea filed June 23, 2010 ..... Vol. II 216-218

Answer to Counterclaim of Defendants/Counterclaimants Baker's  
filed June 28, 2010..... Vol. II 219-223

Answer to Amended Counterclaim of Defendants/Counterclaimants  
Gilbertson's filed June 28, 2010 ..... Vol. II 224-228

Notice of Limited Appearance filed July 16, 2010..... Vol. II 229-230

Request for Trial Setting filed August 6, 2010 ..... Vol. II 231-232

## TABLE OF CONTENTS

Affidavit of Tim Baker in Support of Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and preliminary Injunction filed August 12, 2010 .....	Vol. II 233-261
Memorandum in Support of Defendants/Counterclaimant Bakers' Motion for Restraining Order and Preliminary Injunction filed August 12, 2010 .....	Vol. II 262-267
Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction filed August 12, 2010 .....	Vol. II 268-270
Scheduling Order filed August 24, 2010.....	Vol. II 271-274
Supplemental Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed August 25, 2010 .....	Vol. II 275-279
Notice of Motion and Amended Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed August 25, 2010 .....	Vol. II 280-283
Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Opposition to Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction filed September 8, 2010.....	Vol. II 284-289
Opposition to Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction filed September 8, 2010.....	Vol. II 290-297
Order Granting Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed September 10, 2010.....	Vol. II 298-300
Order filed September 15, 2010.....	Vol. II 301-303
Notice of Trial filed September 24, 2010.....	Vol. II 304-311
Order for Mediation filed September 24, 2010.....	Vol. II 312-314
Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages filed November 2, 2010.....	Vol. II 315-332

## TABLE OF CONTENTS

Plaintiffs' Motion to Compel Responses to Plaintiffs' First Set of Requests for Admissions, Interrogatories, and Requests for Production to Defendants Timothy Baker and Nellie Gilbertson filed November 3, 2010.....	Vol. II	333-341
Notice of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010.....	Vol. II	342-344
Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010 .....	Vol. II	345-370
Affidavit of Brian F. Davis in Support of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010.....	Vol. II	371-373

### VOLUME III

Affidavit of Jean L. Coleman in Support of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010.....	Vol. III	374-416
Order Granting Plaintiffs' Motion to Compel Responses to Plaintiffs' First Set of Requests for Admissions, Interrogatories, and Requests for Production to Defendants Timothy Baker and Nellie Gilbertson filed December 14, 2010.....	Vol. III	417-419
Order Granting Plaintiffs Leave to Amend Their First Amended Complaint to Include Claims for Relief of Punitive Damages Against Defendants Timothy and Carol Baker filed December 14, 2010.....	Vol. III	420-422
Motion to Strike Affidavits Filed in Support of Plaintiffs' Motion for Summary Judgment filed December 22, 2010.....	Vol. III	423-432
Plaintiffs' Opposition to Defendants' Motion to Strike Affidavits Filed in Support of Plaintiffs' Motion for Summary Judgment filed December 29, 2010.....	Vol. III	433-439
Plaintiffs' Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment filed December 29, 2010.....	Vol. III	440-449
Defendants Baker and Gilbertson's Motion to Shorten Time filed January 3, 2011.....	Vol. III	450-452

## TABLE OF CONTENTS

Defendants' Motion for Protective Order filed January 3, 2011.....	Vol. III 453-456
Affidavit of Toby McLaughlin in Support of Defendants' Motion for Protective Order filed January 3, 2011 .....	Vol. III 457-459
Amended Affidavit of Toby McLaughlin in Support of Defendants' Motion for Protective Order filed January 4, 2011 .....	Vol. III 460-470
Notice of Medical Condition of Defendant James Gilbertson filed January 4, 2011.....	Vol. III 471-473
Second Amended Complaint to Quiet Title, for Damages for Timber Trespass and Common Law Trespass, for Injunctive Relief, Including claim for Punitive Damages filed January 21, 2011 .....	Vol. III 474-492
Acknowledgment Pursuant to Rule 16(k)(7) IRCP Regarding Case Status/Mediation filed January 21, 2011 .....	Vol. III 493-494
Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Leave of Court to File Amended Complaint filed January 25, 2011 .....	Vol. III 495-530
Plaintiffs' Motion and Brief for Leave of Court to File Amended Complaint filed January 25, 2011.....	Vol. III 531-537
Defendant's Objection to Plaintiffs' Motion for a Third Amended Complaint filed January 28, 2011.....	Vol. III 538-542
Motion to Shorten Time filed January 28, 2011 .....	Vol. III 543-545
Motion to Strike and Motion for Preliminary Injunction; Notice of Hearing filed January 28, 2011 .....	Vol. III 546-548
Memorandum Supporting Motion to Strike and Motion for Preliminary Injunction filed January 28, 2011 .....	Vol. III 549-560

## VOLUME IV

Affidavit of Toby McLaughlin in Support of Defendants' Motion for Preliminary Injunction filed February 4, 2011 .....	Vol. IV 561-590
Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion to Strike and Motion for Preliminary Injunction filed February 8, 2011 .....	Vol. IV 591-608

## TABLE OF CONTENTS

Affidavit of Terri Boyd-Davis in Support of Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion to Strike and Motion for Preliminary Injunction and in Support of plaintiffs' Motion to Amend Complaint filed February 8, 2011 .....	Vol. IV 609-637
Order for Signatures and Denying Preliminary Injunction filed February 11, 2011 .....	Vol. IV 638-639
Order Granting Plaintiffs' Leave to Amend Their Second Amended Complaint to Include a Claim of Adverse Possession Under Written Claim of Title filed February 14, 2011 .....	Vol. IV 640-642
Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion for Protective Order filed February 15, 2011 .....	Vol. IV 643-650
Plaintiff Terri Boyd-Davis' Request to Set Final Pre-Trial Conference filed February 22, 2011 .....	Vol. IV 651-652
Plaintiff's Motion to Compel Responses to Plaintiffs' Requests for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Timothy Baker, Set Two filed February 22, 2011.....	Vol. IV 653-662
Motion to Shorten Time filed February 22, 2011 .....	Vol. IV 663-665
Affidavit of Terri Boyd-Davis' in Support of Plaintiff's Motion to Compel filed February 22, 2011 .....	Vol. IV 666-675
Notice of Intent to Take Default of Defendant John Pandrea filed February 23, 2011 .....	Vol. IV 676-678
Third Amended Complaint to Quiet Title, For Damages for Timber Trespass and Common Law Trespass, for Injunctive Relief, Including Claim for Punitive Damages filed February 23, 2011 .....	Vol. IV 679-697
Defendant John Pandrea's Answer to Plaintiff's Notice of Intent to Take Default of Defendant John Pandrea, Defendant John Pandrea's Motion for Dismissal of all Charges Brought by Plaintiffs Against Defendant John Pandrea, and Defendant John Pandrea's Objection to Plaintiff's Unauthorized Practice of Law filed March 2, 2011 .....	Vol. IV 698-703
Defendants/Counterclaimant Baker's Answer to Plaintiffs' Third Amended Complaint, Affirmative Defenses and Counterclaims filed March 2, 2011 .....	Vol. IV 704-712

## TABLE OF CONTENTS

Notice to Counsel filed March 4, 2011 .....	Vol. IV	713-720
Stipulation and Order of Dismissal With Prejudice RE: Claims by and Against Gilbertsons filed March 7, 2011 .....	Vol. IV	721-724
Application for Entry of Default of Defendant John Pandrea filed March 14, 2011 .....	Vol. IV	725-727
Plaintiff Terri Boyd-Davis' Proposed Findings of Fact and Conclusions of Law filed March 21, 2011 .....	Vol. IV	728-746
Plaintiff Terri Boyd-Davis' Motion in Limine Re Exclusion of Testimony of Defendants' Designated Expert Witnesses filed March 21, 2011 .....	Vol. IV	747-753

## VOLUME V

Affidavit of Terri Boyd-Davis in Support of Plaintiff Terri Boyd-Davis' Motion in Limine Re Exclusion of Testimony of Defendants' Designated Expert Witnesses filed March 21, 2011 .....	Vol. V	754-763
Trial Brief filed March 21, 2011 .....	Vol. V	764-785
Defendant Bakers Opposition to Plaintiffs' Application for Entry of Default of Defendant John Pandrea filed March 23, 2011 .....	Vol. V	786-790
Defendant Bakers' Proposed Findings of Fact and Conclusions of Law filed March 23, 2011 .....	Vol. V	791-805
Motion to Shorten Time filed March 24, 2011 .....	Vol. V	806-808
Plaintiff Terri Boyd-Davis' Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply With Discovery Order Filed March 24, 2011 .....	Vol. V	809-813
Affidavit of Terri Boyd-Davis in Support of Her Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply with Discovery Order filed March 24, 2011 .....	Vol. V	814-823
Affidavit of Toby McLaughlin Supporting Defendants' Response to Plaintiffs' Motion in Limine filed March 24, 2011 .....	Vol. V	824-828

## TABLE OF CONTENTS

Defendants' Response to Plaintiff's Motion in Limine filed March 24, 2011 .....	Vol. V 829-837
Order Determining Liability and Order for Removal of Chain Link Fence filed April 28, 2011 .....	Vol. V 838-840
Amended Order Determining Liability and Order for Removal of Chain Link Fence filed May 6, 2011 .....	Vol. V 841-843
Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification filed May 12, 2011 .....	Vol. V 844-846
Memorandum in Support of Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification filed May 12, 2011 .....	Vol. V 847-859
Plaintiff Terri Boyd-Davis' Motion to Commence Damages Stage of Trial filed June 8, 2011.....	Vol. V 860-864
Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification filed June 29, 2011.....	Vol. V 865-874
Decision RE: Bakers' Motion for Clarification and Reconsideration filed September 2, 2011.....	Vol. V 875-887
Order Denying Entry of Default Against John Pandrea filed September 2, 2011.....	Vol. V 888-893
Motion for 54(b) Certification and Notice of Hearing filed September 30, 2011.....	Vol. V 894-895
Memorandum in Support of Motion for 54(b) Certification filed September 30, 2011.....	Vol. V 896-899
Defendant Bakers' Objection to Plaintiffs' Proposed Judgment filed November 15, 2011.....	Vol. V 900-911
Plaintiffs' Opposition to Defendants' Motion for 54(b) Certification filed November 28, 2011.....	Vol. V 912-919
Affidavit of Brian F. Davis in Support of Plaintiffs' Opposition to Defendants' Motion for 54(b) Certification filed November 28, 2011.....	Vol. V 920-922

## TABLE OF CONTENTS

Plaintiff Terri Boyd-Davis' Opposition to Defendants Gilbertsons' Motion to Enforce Settlement Agreement and Release Lis Pendens filed December 9, 2011..... Vol. V 923-938

Plaintiff Terri Boyd-Davis' Response to Defendants Bakers' Objection to Plaintiffs' Proposed Judgment filed December 28, 2011..... Vol. V 939-948

Order to Quash Lis Pendens filed January 4, 2012..... Vol. V 949-951

Amended Order to Quash Lis Pendens filed January 6, 2012..... Vol. V 952-954

## VOLUME VI

Corrected Order to Release Lis Pendens (re: Gilbertson's Property) filed January 19, 2012..... Vol. VI 955-957

Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment filed January 20, 2012 ..... Vol. VI 958-974

Plaintiff Terri Boyd-Davis' Response to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment filed January 30, 2012..... Vol. VI 975-999

Plaintiff Terri Boyd-Davis' Response to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment filed February 3, 2012 ..... Vol. VI 1000-1024

Oder for Further Hearing RE: Defendants' Objection to Plaintiffs' Proposed Judgment filed March 28, 2012..... Vol. VI 1025-1029

Plaintiff Terri Boyd-Davis' Supplemental Brief RE: Plaintiffs' Quiet Title Claims Under the Theory of Boundary by Agreement filed April 30, 2012..... Vol. VI 1030-1039

Defendant Bakers' Post-Trial Brief filed April 30, 2012..... Vol. VI 1040-1074

Memorandum Decision RE: Defendants' Objection to Plaintiffs' Proposed Judgment filed July 13, 2012..... Vol. VI 1075-1084

Memorandum Decision RE: Remaining Liability Causes of Action in Plaintiffs' Third Amended Complaint filed July 13, 2012..... Vol. VI 1085-1100



## TABLE OF CONTENTS

Special Appearance Motion for Dismissal Without Argument filed July 24, 2012 .....	Vol. VI 1101-1111
Order Dismissing Defendant John Pandrea filed August 7, 2012 .....	Vol. VI 1112-1114
Defendant Bakers' Objection to Letter Filed by Plaintiff Terri Boyd-Davis filed August 14, 2012 .....	Vol. VI 1115-1121
Defendant Bakers' Objection to Letter Filed by Plaintiff Terri Boyd-Davis filed August 15, 2012 .....	Vol. VI 1122-1128
Notice of Submission of Survey, Legal Description, and Letter from Surveyor Robert Stratton filed September 7, 2012 .....	Vol. VI 1129-1132
Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman filed September 13, 2012.....	Vol. VI 1133-1135
Rule 54(b) Certificate filed September 13, 2012 .....	Vol. VI 1136-1138

## VOLUME VII

Plaintiff Terri Boyd-Davis' Motion for Reconsideration of Memorandum Decision RE Remaining Causes of Action in Plaintiffs' Third Amended Complaint and Objection to 54(b) Certification of Partial Judgment filed September 26, 2012.....	Vol. VII 1139-1162
Notice of Appeal filed October 25, 2012 .....	Vol. VII 1163-1181
Supplemental Decision RE: Remaining Liability Causes of Action in Plaintiffs' Third Amended Complaint and Order RE: Plaintiffs' Motion for Reconsideration of Rule 54(b) Certificate filed November 29, 2012.....	Vol. VII 1182-1199
Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman filed November 29, 2012.....	Vol. VII 1200-1203
Amended Notice of Appeal filed January 9, 2013.....	Vol. VII 1204-1223

TABLE OF CONTENTS

Order RE: Amended Notice of Cross Appeal filed January 15, 2013.....	Vol. VII 1224-1225
Amended Notice of Cross Appeal filed January 25, 2013.....	Vol. VII 1226-1233

## INDEX

Acknowledgment Pursuant to Rule 16(k)(7) IRCP Regarding Case Status/Mediation filed January 21, 2011 .....	Vol. III 493-494
Affidavit of Brian F. Davis in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary injunction filed May 3, 2010 .....	Vol. I 134-148
Affidavit of Brian F. Davis in Support of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010.....	Vol. II 371-373
Affidavit of Brian F. Davis in Support of Plaintiffs' Opposition to Defendants' Motion for 54(b) Certification filed November 28, 2011.....	Vol. V 920-922
Affidavit of Jean L. Coleman in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed April 30, 2010 .....	Vol. I 69-77
Affidavit of Jean L. Coleman in Support of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010.....	Vol. III 374-416
Affidavit of Terri Boyd-Davis in Support of Her Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply with Discovery Order filed March 24, 2011 .....	Vol. V 814-823
Affidavit of Terri Boyd-Davis in Support of Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed June 23, 2010 .....	Vol. II 216-218
Affidavit of Terri Boyd-Davis in Support of Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion to Strike and Motion for Preliminary Injunction and in Support of plaintiffs' Motion to Amend Complaint filed February 8, 2011 .....	Vol. IV 609-637
Affidavit of Terri Boyd-Davis in Support of Plaintiff Terri Boyd-Davis' Motion in Limine Re Exclusion of Testimony of Defendants' Designated Expert Witnesses filed March 21, 2011.....	Vol. V 754-763
Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed April 30, 2010 .....	Vol. I 78-116

## INDEX

Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010 .....	Vol. II	345-370
Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Leave of Court to File Amended Complaint filed January 25, 2011 .....	Vol. III	495-530
Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Opposition to Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction filed September 8, 2010 .....	Vol. II	284-289
Affidavit of Terri Boyd-Davis' in Support of Plaintiff's Motion to Compel filed February 22, 2011 .....	Vol. IV	666-675
Affidavit of Tim Baker in Support of Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and preliminary Injunction filed August 12, 2010 .....	Vol. II	233-261
Affidavit of Toby McLaughlin in Support of Defendants' Motion for Protective Order filed January 3, 2011 .....	Vol. III	457-459
Affidavit of Toby McLaughlin in Support of Defendants' Motion for Preliminary Injunction filed February 4, 2011 .....	Vol. IV	561-590
Affidavit of Toby McLaughlin Supporting Defendants' Response to Plaintiffs' Motion in Limine filed March 24, 2011 .....	Vol. V	824-828
Amended Affidavit of Toby McLaughlin in Support of Defendants' Motion for Protective Order filed January 4, 2011 .....	Vol. III	460-470
Amended Notice of Appeal filed January 9, 2013.....	Vol. VII	1204-1223
Amended Notice of Cross Appeal filed January 25, 2013.....	Vol. VII	1226-1233
Amended Order Determining Liability and Order for Removal of Chain Link Fence filed May 6, 2011 .....	Vol. V	841-843
Amended Order to Quash Lis Pendens filed January 6, 2012.....	Vol. V	952-954
Answer and Counterclaim of Defendant Pandrea filed May 18, 2010 .....	Vol. I	153-158
Answer to Amended Counterclaim of Defendants/Counterclaimants Gilbertson's filed June 28, 2010 .....	Vol. II	224-228

## INDEX

Answer to Counterclaim of Defendants/Counterclaimants Baker's filed June 28, 2010.....	Vol. II 219-223
Application for Entry of Default of Defendant John Pandrea filed March 14, 2011 .....	Vol. IV 725-727
Clerk's Record on Appeal .....	Vol. I 1B-1C
Corrected Order to Release Lis Pendens (re: Gilbertson's Property) filed January 19, 2012.....	Vol. VI 955-957
Cover Page .....	Vol. I 1A
Decision RE: Bakers' Motion for Clarification and Reconsideration filed September 2, 2011.....	Vol. V 875-887
Defendant Bakers Opposition to Plaintiffs' Application for Entry of Default of Defendant John Pandrea filed March 23, 2011.....	Vol. V 786-790
Defendant Bakers' Objection to Letter Filed by Plaintiff Terri Boyd-Davis filed August 14, 2012 .....	Vol. VI 1115-1121
Defendant Bakers' Objection to Letter Filed by Plaintiff Terri Boyd-Davis filed August 15, 2012 .....	Vol. VI 1122-1128
Defendant Bakers' Objection to Plaintiffs' Proposed Judgment filed November 15, 2011.....	Vol. V 900-911
Defendant Bakers' Post-Trial Brief filed April 30, 2012.....	Vol. VI 1040-1074
Defendant Bakers' Proposed Findings of Fact and Conclusions of Law filed March 23, 2011 .....	Vol. V 791-805
Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment filed January 20, 2012 .....	Vol. VI 958-974
Defendant John Pandrea's Answer to Plaintiff's Notice of Intent to Take Default of Defendant John Pandrea, Defendant John Pandrea's Motion for Dismissal of all Charges Brought by Plaintiffs Against Defendant John Pandrea, and Defendant John Pandrea's Objection to Plaintiff's Unauthorized Practice of Law filed March 2, 2011 .....	Vol. IV 698-703
Defendant Mary Pandrea's Answer to First Amended Complaint and Counterclaim filed May 20, 2010 .....	Vol. I 172-179

## INDEX

Defendant's Objection to Plaintiffs' Motion for a Third Amended Complaint filed January 28, 2011.....	Vol. III 538-542
Defendants Baker and Gilbertson's Motion to Shorten Time filed January 3, 2011.....	Vol. III 450-452
Defendants/Counterclaimant Baker's Answer to Plaintiffs' Amended First Amended Complaint, Affirmative Defenses and Counterclaims filed June 7, 2010.....	Vol. II 193-202
Defendants/Counterclaimant Baker's Answer to Plaintiffs' Third Amended Complaint, Affirmative Defenses and Counterclaims filed March 2, 2011 .....	Vol. IV 704-712
Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction filed August 12, 2010 .....	Vol. II 268-270
Defendants/Counterclaimant Gilbertson's Amended Answer to Plaintiffs' Amended First Amended Complaint, Affirmative Defenses and Counterclaims filed June 7, 2010.....	Vol. II 203-211
Defendants/Counterclaimant Gilbertson's Answer to Plaintiffs' Amended First Amended Complaint, Affirmative Defenses and Counterclaims filed May 19, 2010.....	Vol. I 161-171
Defendants' Motion for Protective Order filed January 3, 2011.....	Vol. III 453-456
Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification filed May 12, 2011 .....	Vol. V 844-846
Defendants' Response to Plaintiff's Motion in Limine filed March 24, 2011 .....	Vol. V 829-837
First Amended Verified Complaint to Quiet Title, for Damages for Timber Trespass and Common law Trespass and for Injunctive Relief filed April 27, 2010 .....	Vol. I 51-68
Index .....	Vol. I 1D-1G
Memorandum Decision RE: Defendants' Objection to Plaintiffs' Proposed Judgment filed July 13, 2012 .....	Vol. VI 1075-1084

## INDEX

Memorandum Decision RE: Remaining Liability Causes of Action in Plaintiffs' Third Amended Complaint filed July 13, 2012.....	Vol. VI	1085-1100
Memorandum in Support of Defendants/Counterclaimant Bakers' Motion for Restraining Order and Preliminary Injunction filed August 12, 2010 .....	Vol. II	262-267
Memorandum in Support of Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification filed May 12, 2011 .....	Vol. V	847-859
Memorandum in Support of Motion for 54(b) Certification filed September 30, 2011.....	Vol. V	896-899
Memorandum Supporting Motion to Strike and Motion for Preliminary Injunction filed January 28, 2011 .....	Vol. III	549-560
Motion for 54(b) Certification and Notice of Hearing filed September 30, 2011.....	Vol. V	894-895
Motion to Shorten Time filed February 22, 2011 .....	Vol. IV	663-665
Motion to Shorten Time filed January 28, 2011 .....	Vol. III	543-545
Motion to Shorten Time filed March 24, 2011 .....	Vol. V	806-808
Motion to Strike Affidavits Filed in Support of Plaintiffs' Motion for Summary Judgment filed December 22, 2010.....	Vol. III	423-432
Motion to Strike and Motion for Preliminary Injunction; Notice of Hearing filed January 28, 2011 .....	Vol. III	546-548
Notice of Appeal filed October 25, 2012 .....	Vol. VII	1163-1181
Notice of Appearance filed May 12, 2010.....	Vol. I	151-152
Notice of Appearance filed May 18, 2010.....	Vol. I	159-160
Notice of Appearance filed May 4, 2010.....	Vol. I	149-150
Notice of Intent to Take Default of Defendant John Pandrea filed February 23, 2011 .....	Vol. IV	676-678
Notice of Limited Appearance filed July 16, 2010.....	Vol. II	229-230

## INDEX

Notice of Medical Condition of Defendant James Gilbertson filed January 4, 2011.....	Vol. III 471-473
Notice of Motion and Amended Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed August 25, 2010 .....	Vol. II 280-283
Notice of Motion and Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed June 23, 2010.....	Vol. II 212-215
Notice of Motion and Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed April 30, 2010 .....	Vol. I 117-133
Notice of Plaintiffs' Motion for Partial Summary Judgment filed December 8, 2010.....	Vol. II 342-344
Notice of Submission of Survey, Legal Description, and Letter from Surveyor Robert Stratton filed September 7, 2012 .....	Vol. VI 1129-1132
Notice of Trial filed September 24, 2010 .....	Vol. II 304-311
Notice to Counsel filed March 4, 2011 .....	Vol. IV 713-720
Oder for Further Hearing RE: Defendants' Objection to Plaintiffs' Proposed Judgment filed March 28, 2012.....	Vol. VI 1025-1029
Opposition to Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction filed September 8, 2010.....	Vol. II 290-297
Order Denying Entry of Default Against John Pandrea filed September 2, 2011.....	Vol. V 888-893
Order Determining Liability and Order for Removal of Chain Link Fence filed April 28, 2011 .....	Vol. V 838-840
Order Dismissing Defendant John Pandrea filed August 7, 2012 .....	Vol. VI 1112-1114
Order filed September 15, 2010.....	Vol. II 301-303
Order for Mediation filed September 24, 2010.....	Vol. II 312-314



## INDEX

Order for Signatures and Denying Preliminary Injunction filed February 11, 2011 .....	Vol. IV 638-639
Order Granting Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed September 10, 2010.....	Vol. II 298-300
Order Granting Plaintiffs Leave to Amend Their First Amended Complaint to Include Claims for Relief of Punitive Damages Against Defendants Timothy and Carol Baker filed December 14, 2010.....	Vol. III 420-422
Order Granting Plaintiffs' Leave to Amend Their Second Amended Complaint to Include a Claim of Adverse Possession Under Written Claim of Title filed February 14, 2011 .....	Vol. IV 640-642
Order Granting Plaintiffs' Motion for Temporary Restraining Order filed May 27, 2010 .....	Vol. I 188-192
Order Granting Plaintiffs' Motion to Compel Responses to Plaintiffs' First Set of Requests for Admissions, Interrogatories, and Requests for Production to Defendants Timothy Baker and Nellie Gilbertson filed December 14, 2010.....	Vol. III 417-419
Order RE: Amended Notice of Cross Appeal filed January 15, 2013.....	Vol. VII 1224-1225
Order Restraining Entry Onto Disputed Property by Defendants Mary Pandrea, Nellie Gilbertson and James Gilbertson filed May 27, 2010 .....	Vol. I 183-187
Order to Quash Lis Pendens filed January 4, 2012.....	Vol. V 949-951
Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman filed September 13, 2012.....	Vol. VI 1133-1135
Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman filed November 29, 2012.....	Vol. VII 1200-1203

# INDEX

Plaintiff Terri Boyd-Davis' Motion for Reconsideration of Memorandum Decision RE Remaining Causes of Action in Plaintiffs' Third Amended Complaint and Objection to 54(b) Certification of Partial Judgment filed September 26, 2012.....	Vol. VII 1139-1162
Plaintiff Terri Boyd-Davis' Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply With Discovery Order Filed March 24, 2011 .....	Vol. V 809-813
Plaintiff Terri Boyd-Davis' Motion in Limine Re Exclusion of Testimony of Defendants' Designated Expert Witnesses filed March 21, 2011 .....	Vol. IV 747-753
Plaintiff Terri Boyd-Davis' Motion to Commence Damages Stage of Trial filed June 8, 2011.....	Vol. V 860-864
Plaintiff Terri Boyd-Davis' Opposition to Defendants Gilbertsons' Motion to Enforce Settlement Agreement and Release Lis Pendens filed December 9, 2011.....	Vol. V 923-938
Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion for Protective Order filed February 15, 2011 .....	Vol. IV 643-650
Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification filed June 29, 2011.....	Vol. V 865-874
Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion to Strike and Motion for Preliminary Injunction filed February 8, 2011 .....	Vol. IV 591-608
Plaintiff Terri Boyd-Davis' Proposed Findings of Fact and Conclusions of Law filed March 21, 2011 .....	Vol. IV 728-746
Plaintiff Terri Boyd-Davis' Request to Set Final Pre-Trial Conference filed February 22, 2011 .....	Vol. IV 651-652
Plaintiff Terri Boyd-Davis' Response to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment filed February 3, 2012 .....	Vol. VI 1000-1024
Plaintiff Terri Boyd-Davis' Response to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment filed January 30, 2012.....	Vol. VI 975-999

## INDEX

Plaintiff Terri Boyd-Davis' Response to Defendants Bakers' Objection to Plaintiffs' Proposed Judgment filed December 28, 2011 .....	Vol. V 939-948
Plaintiff Terri Boyd-Davis' Supplemental Brief RE: Plaintiffs' Quiet Title Claims Under the Theory of Boundary by Agreement filed April 30, 2012 .....	Vol. VI 1030-1039
Plaintiff's Motion to Compel Responses to Plaintiffs' Requests for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Timothy Baker, Set Two filed February 22, 2011.....	Vol. IV 653-662
Plaintiffs' Motion and Brief for Leave of Court to File Amended Complaint filed January 25, 2011 .....	Vol. III 531-537
Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages filed November 2, 2010.....	Vol. II 315-332
Plaintiffs' Motion to Compel Responses to Plaintiffs' First Set of Requests for Admissions, Interrogatories, and Requests for Production to Defendants Timothy Baker and Nellie Gilbertson filed November 3, 2010.....	Vol. II 333-341
Plaintiffs' Opposition to Defendants' Motion for 54(b) Certification filed November 28, 2011.....	Vol. V 912-919
Plaintiffs' Opposition to Defendants' Motion to Strike Affidavits Filed in Support of Plaintiffs' Motion for Summary Judgment filed December 29, 2010.....	Vol. III 433-439
Plaintiffs' Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment filed December 29, 2010.....	Vol. III 440-449
Request for Trial Setting filed August 6, 2010 .....	Vol. II 231-232
ROA's.....	Vol. I 1-37
Rule 54(b) Certificate filed September 13, 2012 .....	Vol. VI 1136-1138
Scheduling Order filed August 24, 2010.....	Vol. II 271-274

## INDEX

Second Amended Complaint to Quiet Title, for Damages for Timber Trespass and Common Law Trespass, for Injunctive Relief, Including claim for Punitive Damages filed January 21, 2011 .....	Vol. III 474-492
Special Appearance Motion for Dismissal Without Argument filed July 24, 2012 .....	Vol. VI 1101-1111
Stipulation and Order of Dismissal with Prejudice filed May 26, 2010 .....	Vol. I 180-182
Stipulation and Order of Dismissal With Prejudice RE: Claims by and Against Gilbertsons filed March 7, 2011 .....	Vol. IV 721-724
Supplemental Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Order Authorizing Publication in Lieu of Personal Service on Out-Of-State Defendant John Pandrea filed August 25, 2010 .....	Vol. II 275-279
Supplemental Decision RE: Remaining Liability Causes of Action in Plaintiffs' Third Amended Complaint and Order RE: Plaintiffs' Motion for Reconsideration of Rule 54(b) Certificate filed November 29, 2012.....	Vol. VII 1182-1199
Table of Contents .....	Vol. I 1D-1N
Third Amended Complaint to Quiet Title, For Damages for Timber Trespass and Common Law Trespass, for Injunctive Relief, Including Claim for Punitive Damages filed February 23, 2011 .....	Vol. IV 679-697
Trial Brief filed March 21, 2011 .....	Vol. V 764-785
Verified Complaint to Quiet Title and for Injunctive Relief filed April 19, 2010 .....	Vol. I 38-50

Date	Code	User	Judge
10/25/0212	CHJG	DRIVER	Change Assigned Judge
4/19/2010	NCOC	PHILLIPS	New Case Filed - Other Claims
		PHILLIPS	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Boyd-Davis, Terry (plaintiff) Receipt number: 0434832 Dated: 4/19/2010 Amount: \$88.00 (Check) For: Boyd-Davis, Terry (plaintiff)
	APER	PHILLIPS	Plaintiff: Boyd-Davis, Terry Appearance Pro Se
	APER	PHILLIPS	Plaintiff: Davis, Brian F Appearance Pro Se
	APER	PHILLIPS	Plaintiff: Coleman, Jean L Appearance Pro Se
	COMP	PHILLIPS	Complaint Filed - Verified Complaint to Quiet Title and for Injunctive Relief
	SMIS	PHILLIPS	Summons Issued
4/28/2010	AMCO	PHILLIPS	Amended Complaint Filed - First Amended Verified Complaint to Quiet Title, for Damages for Timber Trespass and Common Law Trespass and for Injunctive Relief
4/30/2010	AFFD	PHILLIPS	Affidavit of Jean L. Coleman in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction
	AFFD	PHILLIPS	Affidavit of Terry Boyd-Davis in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction
	NOTC	PHILLIPS	Notice of Motion and Plaintiffs Motion for Temporary Restraining Order and Preliminary Injunction
	HRSC	PHILLIPS	Hearing Scheduled (Motion 05/05/2010 03:00 PM) for Temporary Restraining Order
	HRSC	PHILLIPS	Hearing Scheduled (Motion 06/09/2010 09:15 AM) for Preliminary Injunction
5/3/2010	AFFD	OPPELT	Affidavit of Brian F. Davis in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction
	PROO	OPPELT	Proof Of Service of Summons; Verified Complaint to Quiet Title and for Injunctive Relief; and Plaintiffs' Requests for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Mary Pandrea, Set One
	PROO	OPPELT	Proof Of Service of Summons and Verified Complaint to Quiet Title and for Injunctive Relief
	PROO	OPPELT	Proof Of Service of Summons; Verified Complaint to Quiet Title and for Injunctive Relief; and Plaintiffs' Requests for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Nellie Gilbertson, Set One

Date	Code	User	Judge
5/3/2010		PHILLIPS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Berg & McLaughlin Receipt number: 0435580 Dated: 5/3/2010 Amount: \$79.00 (Check)
5/4/2010	APER	BOWERS	Defendant: Baker, Timothy Appearance D. Toby McLaughlin
	APER	BOWERS	Defendant: Baker, Carol Appearance D. Toby McLaughlin
		BOWERS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: McLaughlin, D. Toby (attorney for Baker, Carol) Receipt number: 0435701 Dated: 5/4/2010 Amount: \$58.00 (Check) For: Baker, Carol (defendant) and Baker, Timothy (defendant)
	NOAP	OPPELT	Notice Of Appearance
5/5/2010	CMIN	RASOR	Court Minutes Hearing type: Motion Hearing date: 5/5/2010 Time: 4:02 pm Courtroom: Court reporter: VAL LARSON Minutes Clerk: Sandra Rasor Tape Number: 1
	CTLG	PHILLIPS	Hearing result for Motion 5/05/2010: Court Log-Ctrm 1
	DCHH	PHILLIPS	District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100
5/7/2010	CESV	OPPELT	Certificate Of Service Upon Defendants Timothy Baker and Carol Baker of First Amended Complaint to Quiet Title, for Damages for Timber Trespass and Common Law Trespass and for Injunctive Relief
	LETT	PHILLIPS	Letter from Terri Boyd-Davis
	LETT	PHILLIPS	Letter from Toby McLaughlin
5/12/2010	CONT	CMOORE	Continued (Motion 05/20/2010 02:00 PM) for Temporary Restraining Order
		CMOORE	Amended Notice of Hearing
		SMITH	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Berg & McLaughlin Receipt number: 0436217 Dated: 5/12/2010 Amount: \$58.00 (Check) For: Gilbertson, James (defendant)
	NOTC	PHILLIPS	Notice of Appearance
	APER	PHILLIPS	Defendant: Gilbertson, James Appearance D. Toby McLaughlin

Date	Code	User	Judge
5/12/2010	APER	PHILLIPS	Defendant: Gilbertson, Nellie Appearance D. Toby McLaughlin Steve Verby
5/14/2010	SUBI	PHILLIPS	Subpoena Issued - blank Steve Verby
5/18/2010		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Workland & Witherspoon Receipt number: 0436491 Dated: 5/18/2010 Amount: \$58.00 (Credit card) For: Pandrea, Mary (defendant) Steve Verby
		PHILLIPS	Filing: Technology Cost - CC Paid by: Workland & Witherspoon Receipt number: 0436491 Dated: 5/18/2010 Amount: \$3.00 (Credit card) For: Pandrea, Mary (defendant) Steve Verby
	ANSW	PHILLIPS	Answer and Counterclaim of Defendant Pandrea Steve Verby
	NOTC	PHILLIPS	Notice of Appearance Steve Verby
	APER	PHILLIPS	Defendant: Pandrea, Mary Appearance James A. McPhee Steve Verby
5/19/2010	NOSV	OPPELT	Notice Of Service Upon Defendant Timothy Baker of Plaintiffs' Requests for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Timothy Baker, Set One Steve Verby
	NOSV	OPPELT	Notice Of Service Upon Defendant Mary Pandrea of First Amended Verified Complaint; Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction; and Supporting Affidavits Steve Verby
	ANSW	OPPELT	Defendants/Counterclaimant Gilbertson's Answer to Plaintiff's Amended First Amended Complaint, Affirmative Defenses and Counterclaims Steve Verby
5/20/2010		HENDRICKSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Mary Pandrea Receipt number: 0436647 Dated: 5/20/2010 Amount: \$5.00 (Check) Steve Verby
		HENDRICKSO	Miscellaneous Payment: Court Tape Fee Paid by: Mary Pandrea Receipt number: 0436647 Dated: 5/20/2010 Amount: \$1.25 (Check) Steve Verby
		HENDRICKSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Mary Pandrea Receipt number: 0436647 Dated: 5/20/2010 Amount: \$.08 (Check) Steve Verby
	ANSW	OPPELT	Defendant Mary Pandrea's Answer to First Amended Complaint and Counterclaim Steve Verby
	CTLG	PHILLIPS	Hearing result for Motion held on 05/20/2010 02:00 PM: Court Log- Crtrm 1 for Temporary Restraining Order Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 05/20/2010 02:00 PM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: for Temporary Restraining Order Steve Verby

Date	Code	User	Judge
5/20/2010	HRVC	PHILLIPS	Hearing result for Motion held on 06/09/2010 09:15 AM: Hearing Vacated for Preliminary Injunction
	CONT	PHILLIPS	Continued - Motion for Temporary Injunction
	HRSC	PHILLIPS	Hearing Scheduled (Motion 07/20/2010 09:00 AM) for Preliminary Injunction
		PHILLIPS	Amended Notice Of Hearing
	CMIN	OPPELT	Court Minutes Hearing type: Motion for Preliminary Injunction Hearing date: 5/20/2010 Time: 2:01 pm Courtroom: Court reporter: None Minutes Clerk: Cherie Moore Tape Number: 1
5/25/2010		BOWERS	Miscellaneous Payment: Tape/copy Time Fee Paid by: Terri Boyd-Davis Receipt number: 0436839 Dated: 5/25/2010 Amount: \$10.00 (Cash)
		BOWERS	Miscellaneous Payment: Court Tape Fee Paid by: Terri Boyd-Davis Receipt number: 0436839 Dated: 5/25/2010 Amount: \$2.50 (Cash)
		BOWERS	Miscellaneous Payment: Court Tape Sales Tax Paid by: Terri Boyd-Davis Receipt number: 0436839 Dated: 5/25/2010 Amount: \$.16 (Cash)
5/26/2010	STIP	PHILLIPS	faxed Stipulation and Order of Dismissal with Prejudice
5/27/2010	ORDR	PHILLIPS	Order Restraining Entry onto Disputed Property by Defendants Mary Pandrea, Nellie Gilbertson and James Gilbertson
	ORDR	PHILLIPS	Order Granting Plaintiffs Motion for Temporary Restraining Order
5/28/2010	NOSV	OPPELT	Notice Of Service Re: Defendant Timothy Baker's Response to Plaintiffs' Request for Admissions, Answers to Interrogatories and Production of Documents, Set One
6/3/2010	NOSV	OPPELT	Notice Of Service Re: Defendants Gilbertson's Response to Plaintiffs' Request for Admissions, Answers to Interrogatories and Production of Documents, Set One
	NOSV	OPPELT	Notice Of Service Re: Defendant Pandrea's Responses to Plaintiffs' Requests for Admissions
	NOTC	OPPELT	Notice of Unavailability of Plaintiffs
6/7/2010	ANSW	PHILLIPS	Defendants/Counterclaimant Baker's Answer to Plaintiffs' Amended First Amended Complaint, Affirmative Defenses and Counterclaims



Date	Code	User	Judge
6/7/2010	MISC	PHILLIPS	Defendants/Counterclaimant Gilbertson's Amended Answer to Plaintiffs' Amended First Amended Complaint, Affirmative Defenses and Counterclaims
	LETT	PHILLIPS	Letter from Terry Boyd-Davis advising no need for Steve Verby July 20, 2010 hearing
	HRVC	PHILLIPS	Hearing result for Motion held on 07/20/2010 09:00 AM: Hearing Vacated for Preliminary Injunction
6/9/2010	ORDR	PHILLIPS	Order of Dismissal With Prejudice (re claims against Pandrea and Pandrea's counterclaims) (judge's signature on page 2 of Stip and Order)
	CDIS	PHILLIPS	Civil Disposition entered for: Pandrea, Mary, Defendant; Boyd-Davis, Terry, Plaintiff; Coleman, Jean L, Plaintiff; Davis, Brian F, Plaintiff. Filing date: 6/9/2010
6/11/2010	CERT	PHILLIPS	Certificate Of Mailing
6/14/2010	NOTD	PHILLIPS	Notice Of Taking Deposition of Jean L. Coleman - Steve Verby June 30, 2010
6/17/2010		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Pandrea, Mary Receipt number: 0438244 Dated: 6/17/2010 Amount: \$3.00 (Check)
6/23/2010	NOTC	PHILLIPS	Notice of Motion and Motion for Order Authorizing Publication in Lieu of Personal Service on Out-of-State Defendant John Pandrea - July 7, 2010
	AFFD	PHILLIPS	Affidavit of Terri Boyd-Davis in Support of Motion for Order Authorizing Publication in Lieu of Personal Service on Out of State Defendant John Pandrea
	HRSC	PHILLIPS	Hearing Scheduled (Motion 07/07/2010 11:15 AM) for Order of Publication
6/24/2010	NTSD	PHILLIPS	Notice Of Service Of Discovery Documents
6/28/2010	ANSW	PHILLIPS	Answer to Counterclaim of Defendants/Counterclaimants Baker's
	ANSW	PHILLIPS	Answer to Amended Counterclaim of Defendants/Counterclaimants Gilbertson's
7/7/2010	NOTC	PHILLIPS	Notice of Intent to Take Oral Deposition of Non-Party witnesses Clifford Johnson and Joan Johnson - July 16, 2010 at Bonner Co. Courthouse
	AFSV	PHILLIPS	Affidavit Of Service of Deposition Subpoenas on Non-Party Witnesses Clifford Johnson and Joan Johnson

Date	Code	User	Judge
7/7/2010	CMIN	RASOR	Court Minutes Hearing type: Motion Hearing date: 7/7/2010 Time: 11:24 am Courtroom: Court reporter: Val Larson Minutes Clerk: Sandra Rasor Tape Number: 1 Steve Verby
	CTLG	PHILLIPS	Hearing result for Motion held on 07/07/2010 11:15 AM: Court Log- Crtrm 1 for Order of Publication Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 07/07/2010 11:15 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Less than 100 for Order of Publication Steve Verby
7/15/2010		SMITH	Miscellaneous Payment: Tape/copy Time Fee Paid by: Mary Pandrea Receipt number: 0439878 Dated: 7/15/2010 Amount: \$5.00 (Check) Steve Verby
		SMITH	Miscellaneous Payment: Court Tape Fee Paid by: Mary Pandrea Receipt number: 0439878 Dated: 7/15/2010 Amount: \$1.25 (Check) Steve Verby
		SMITH	Miscellaneous Payment: Court Tape Sales Tax Paid by: Mary Pandrea Receipt number: 0439878 Dated: 7/15/2010 Amount: \$.08 (Check) Steve Verby
7/16/2010	NOTC	PHILLIPS	Notice of Limited Appearance - Macomber Steve Verby
7/22/2010	NTSD	PHILLIPS	Notice Of Service Of Discovery Documents - Defendant Timothy Baker's supplemental Response to Plaintiffs' Request for Production of Documents, Set One Steve Verby
	NTSD	PHILLIPS	Notice Of Service Of Discovery Documents - Defendant gilbertsons' Supplemental Response to Plaintiffs' Request for Production of Documents, Set One Steve Verby
	AFSV	PHILLIPS	Affidavit Of Service Re: Subpoena Duces Tecum to Tucker, Brown & Vermeer LLC Steve Verby
7/27/2010	NOTD	PHILLIPS	Notice Of Intent to Take Oral Deposition of Defendant Nellie Gilbertson - Aug 13, 2010 Steve Verby
8/4/2010	NOSV	OPPELT	Notice Of Service Re: Defendant Bakers' Second Supplemental Response to Plaintiffs' Request for Production of Documents, Set One Steve Verby
8/5/2010	LETT	OPPELT	Copy of Letter from M&M Court Reporting, Inc. to Rex A. Finney Steve Verby
8/6/2010	RETR	OPPELT	Request For Trial Setting Steve Verby
8/10/2010	REQU	SMITH	Request for Transcript Estimate Steve Verby

Date	Code	User		Judge
8/12/2010	AFFD	OPPELT	Affidavit of Tim Baker in Support of Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction	Steve Verby
	MEMO	OPPELT	Memorandum on Support of Defendants/Counterclaimant Bakers' Motion for Restraining Order and Preliminary Injunction	Steve Verby
	MOTN	OPPELT	Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction	Steve Verby
8/20/2010	LETT	OPPELT	Letter Regarding Availability for the Next Three Weeks from Terry Boyd-Davis	Steve Verby
8/23/2010	NOTC	PHILLIPS	Notice of Service Upon Defenant timothy Baker of Plaintiffs' Terri Boyd-Davis and Brian F. Davis' Responses to Defendant Bakers' Fiest Set of Interrogatories and Request for Production to Plaintiffs Davis	Steve Verby
8/24/2010	LETT	OPPELT	Letter Regarding Unavailable Dates for August, September and October 2010 from Joby McLaughlin	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 09/10/2010 09:00 AM) for Temporary Restraining Order and Preliminary Injunction	Steve Verby
		OPPELT	Notice Of Hearing	Steve Verby
	SCHE	OPPELT	Scheduling Order	Steve Verby
8/25/2010	AFFD	PHILLIPS	Supplemental Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Order Authorizing Publication in Lieu of Personal Service on Out-of-State Defendant John Pandrea	Steve Verby
	NOTC	PHILLIPS	Notice of Motion and Amended Motion for Order Authorizing Publication in Lieu of Personal Service on Out-of-State Defendant John Pandrea - Sept 8, 2010	Steve Verby
	HRSC	PHILLIPS	Hearing Scheduled (Motion 09/08/2010 09:00 AM) for Publication	Steve Verby
8/26/2010	SCHF	PHILLIPS	Scheduling Form - Defendants Baker and Gilbertson's Scheduling Form	Steve Verby
9/2/2010	LETT	OPPELT	Copy of Letter from M&M Court Reporting Service, Inc. to D. Toby McLaughlin	Steve Verby
9/7/2010	NOFH	PHILLIPS	Amended Notice Of Hearing on Motion for Order Authorizing Publication in Lieu of Personal Service on Out of State Defendant John Pandrea	Steve Verby
	HRSC	PHILLIPS	Hearing Scheduled (Motion 09/10/2010 09:00 AM) for Order Authorizing Publication	Steve Verby
9/8/2010	AFFD	OPPELT	Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Opposition to Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction	Steve Verby

Date	Code	User		Judge
9/8/2010	SCHF	OPPELT	Scheduling Form - Terry Boyd-Davis	Steve Verby
	MISC	OPPELT	Opposition to Defendants/Counterclaimant Bakers' Motion for Temporary Restraining Order and Preliminary Injunction	Steve Verby
	AFFD	OPPELT	Affidavit of Brian F. Davis	Steve Verby
	AFFD	OPPELT	Affidavit of Deanna Barrett	Steve Verby
	HRVC	PHILLIPS	Hearing result for Motion held on 09/08/2010 09:00 AM: Hearing Vacated for Publication (no indication that hearing was held - may have been typo on notice from Plaintiff)	Steve Verby
9/10/2010	CMIN	ANDERSON	Court Minutes Hearing type: Motion For Temporary Restraining Order Hearing date: 9/10/2010 Time: 9:08 am Courtroom: Court reporter: Val Larson Minutes Clerk: Lynne Anderson Tape Number: CTRM 2 Toby McLaughlin Terry Boyd-Davis	Steve Verby
	CTLG	PHILLIPS	Hearing result for Motion held on 09/10/2010 09:00 AM: Court Log- Crtrm 2 for Order Authorizing Publication	Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 09/10/2010 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 for Order Authorizing Publication	Steve Verby
	GRNT	PHILLIPS	Hearing result for Motion held on 09/10/2010 09:00 AM: Motion Granted for Order Authorizing Publication	Steve Verby
	CTLG	PHILLIPS	Hearing result for Motion held on 09/10/2010 09:00 AM: Court Log- Crtrm 2 for Temporary Restraining Order and Preliminary Injunction	Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 09/10/2010 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 for Temporary Restraining Order and Preliminary Injunction	Steve Verby
	GRNT	PHILLIPS	Hearing result for Motion held on 09/10/2010 09:00 AM: Motion Granted for Temporary Restraining Order and Preliminary Injunction (per court log, no contact between parties, no improvements or damage to be done to property)	Steve Verby
	EXHB	PHILLIPS	Exhibit List	Steve Verby

Date	Code	User		Judge
9/15/2010	ORDR	JACKSON	Order 3 pgs	Steve Verby
9/20/2010	MISC	SMITH	Miscellaneous - Transcript Estimate	Steve Verby
9/23/2010	NOFH	OPPELT	Notice Of Hearing on Motion for Order to Compel Discovery Responses	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion to Compel 11/17/2010 11:00 AM)	Steve Verby
9/24/2010	NOTL	OPPELT	Notice Of Trial (Pretrial Order Attached)	Steve Verby
	ORDR	OPPELT	Order for Mediation	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Court Trial - 4 Days 03/28/2011 09:00 AM)	Steve Verby
9/28/2010	MISC	PHILLIPS	letter and submission of blank Summons	Steve Verby
10/1/2010		PHILLIPS	Miscellaneous Payment: Tape/copy Time Fee Paid by: Terri Boyd-Davis Receipt number: 0444628 Dated: 10/1/2010 Amount: \$5.00 (Check)	Steve Verby
		PHILLIPS	Miscellaneous Payment: Court Tape Fee Paid by: Terri Boyd-Davis Receipt number: 0444628 Dated: 10/1/2010 Amount: \$1.25 (Check)	Steve Verby
		PHILLIPS	Miscellaneous Payment: Court Tape Sales Tax Paid by: Terri Boyd-Davis Receipt number: 0444628 Dated: 10/1/2010 Amount: \$.08 (Check)	Steve Verby
10/6/2010	CINF	HENDRICKSO	Terry Boyd will send the fee for the CD. Tracy is holding. and she will also be sending a summons to be issued for the Order of Publication dated 9-10-2010. I do not see that she summons was issued. She is asking that the summons be returned with the CD. Jo	Steve Verby
	SMIS	PHILLIPS	Summons Issued - by Publication	Steve Verby
10/18/2010		PHILLIPS	Miscellaneous Payment: Registered Mail Fee Paid by: Terri Boyd-Davis Receipt number: 0445598 Dated: 10/18/2010 Amount: \$1.20 (Check)	Steve Verby
		PHILLIPS	Miscellaneous Payment: Tape/copy Time Fee Paid by: Terri Boyd-Davis Receipt number: 0445598 Dated: 10/18/2010 Amount: \$5.00 (Check)	Steve Verby
		PHILLIPS	Miscellaneous Payment: Court Tape Fee Paid by: Terri Boyd-Davis Receipt number: 0445598 Dated: 10/18/2010 Amount: \$1.25 (Check)	Steve Verby
		PHILLIPS	Miscellaneous Payment: Court Tape Sales Tax Paid by: Terri Boyd-Davis Receipt number: 0445598 Dated: 10/18/2010 Amount: \$.08 (Check)	Steve Verby
10/21/2010	NOTC	MORELAND	Notice of Selection of Mediator - Charles Lempesis	Steve Verby

Date	Code	User		Judge
11/2/2010	AFFD	MORELAND	Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages	Steve Verby
	AFFD	MORELAND	Affidavit of Brian F. Davis in Support of Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for An Award of Punitive Damages	Steve Verby
	MOTN	MORELAND	Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for An Award of Punitive Damages	Steve Verby
	NOHG	MORELAND	Notice Of Hearing RE: Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages	Steve Verby
	HRSC	MORELAND	Hearing Scheduled (Motion 11/17/2010 11:00 AM) for Leave to Amend Plfs' First Amended Complaint	Steve Verby
	PROO	MORELAND	Proof Of Service of Notice of Hearing On Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for An Award of Punitive Damages & Supporting Documents	Steve Verby
11/3/2010	MOTC	MORELAND	Plaintiff's Motion To Compel Responses to Plaintiffs' First Set of Requests for Admissions, Interrogatories, & Requests for Production to Defendants Timothy Baker & Nellie Gilbertson	Steve Verby
	AFFD	MORELAND	Affidavit of Terri Boyd-Davis in Support of Plfs' Motion to Compel Responses to Plfs' First Set of Requests for Admissions, Interrogatories, & Requests for Production of Documents to Defendants Timothy Baker & Nellie Gilbertson	Steve Verby
11/4/2010	NOTC	OPPELT	Notice of Continuance of Hearing on Plaintiffs' 1) Motion for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages; and 2) Motion for Order to Compel Discovery Responses	Steve Verby
	CONT	OPPELT	Hearing result for Motion held on 11/17/2010 11:00 AM: Continued for Leave to Amend Plfs' First Amended Complaint	Steve Verby
	CONT	OPPELT	Hearing result for Motion to Compel held on 11/17/2010 11:00 AM: Continued	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion to Compel 12/08/2010 03:30 PM) Discovery Responses (Plaintiffs' Motion)	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 12/08/2010 03:30 PM) for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages	Steve Verby

Date	Code	User		Judge
11/4/2010	NOSV	MORELAND	Notice Of Service Re: Defendant Bakers' Amended Request for Admissions, Answers to Interrogatories & Production of Documents, set one	Steve Verby
11/23/2010	AFSV	MORELAND	Certificate of Service of Affidavit of Terri-Boyd-Davis in Support of Plaintiffs' Motion to Compel Responses to Plaintiffs' First Set of Requests for Admissions, Interrogatories, & Requests for Production of Documents to Defendants Timothy Baker & Nellie Gilbertson	Steve Verby
11/24/2010	AFFD	MORELAND	Amended Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Leave to Amend Plaintiffs' First Amended complaint to Include a Claim for an Award of Punitive Damages	Steve Verby
	NOTC	MORELAND	Notice of Mediation - Charles Lempesis 1/14/11 9:30	Steve Verby
12/1/2010	MEMO	MORELAND	Memorandum in Opposition to Plaintiffs' Motion to Compel Discovery	Steve Verby
	MEMO	MORELAND	Memorandum in Opposition to Plaintiffs' Motion for Leave to Amend Plaintiffs First Amended Complaint to Include a Claim for An Award of Punitive Damages	Steve Verby
	AFFD	MORELAND	Affidavit of Stephanie Allen in Support of Defendants Memorandum in Opposition to Plaintiffs' Motion for Leave to Amend Plaintiff's First Amended Complaint to Include a Claim for Punitive Damages	Steve Verby
12/8/2010	NOTC	MORELAND	Notice Of Plaintiffs' Motion for Partial Summary Judgment	Steve Verby
	MEMO	MORELAND	Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment	Steve Verby
	AFFD	MORELAND	Affidavit of Terri Boyd-Davis in Support of Plaintiffs' Motion for Partial Summary Judgment	Steve Verby
	AFFD	MORELAND	Affidavit of Brian F. Davis in Support of Plaintiffs' Motion for Partial Summary Judgment	Steve Verby
	CTLG	PHILLIPS	Hearing result for Motion held on 12/08/2010 03:30 PM: Court Log- City Hall for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages	Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 12/08/2010 03:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages	Steve Verby

Date	Code	User	Judge
12/8/2010	GRNT	PHILLIPS	Hearing result for Motion held on 12/08/2010 03:30 PM: Motion Granted (in part) for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages
	DENY	PHILLIPS	Hearing result for Motion held on 12/08/2010 03:30 PM: Motion Denied (in part) for Leave to Amend Plaintiffs' First Amended Complaint to Include a Claim for an Award of Punitive Damages
	CTLG	PHILLIPS	Hearing result for Motion to Compel held on 12/08/2010 03:30 PM: Court Log- City Hall Discovery Responses (Plaintiffs' Motion)
	DCHH	PHILLIPS	Hearing result for Motion to Compel held on 12/08/2010 03:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 Discovery Responses (Plaintiffs' Motion)
	GRNT	PHILLIPS	Hearing result for Motion to Compel held on 12/08/2010 03:30 PM: Motion Granted Discovery Responses (Plaintiffs' Motion)
	MISC	PHILLIPS	Terri Boyd-Davis to submit order
	EXHB	PHILLIPS	Exhibit List (Plaintiff's)
	CMIN	SECK	Court Minutes Hearing type: Motions Hearing date: 12/8/2010 Time: 3:31 pm Courtroom: Court reporter: Minutes Clerk: Melissa Seck Tape Number: city hall
	HRSC	PHILLIPS	Hearing Scheduled (Motion for Partial Summary Judgment 01/05/2011 03:30 PM) Plf's Motn
	AFFD	PHILLIPS	Affidavit of Jean L. Coleman in Support of Plaintiffs' Motion for Partial Summary Judgment
12/14/2010	ORDR	MORELAND	Order Granting Plaintiffs' Motion to Compel Responses to Plaintiffs' First Set of Requests for Admissions, Interrogatories, & Requests for Production to Defendants Timothy Baker & Nellie Gilbertson
	ORDR	MORELAND	Order Granting Plaintiffs Leave to Amend Their First Amended Complaint to Include Claims for Relief of Punitive Damages Against Defendants Timothy & Carol Baker
	CINF	MORELAND	Clerk Information - Copies & Envelopes for above 2 orders have not been provided. She has been told many times.
	NOTD	MORELAND	Notice of Deposition of Terri Boyd-Davis - 02/10/2011 9:00



Date	Code	User		Judge
12/14/2010	NOTD	MORELAND	Notice of Deposition of Brian Davis 2/10/11 1:00	Steve Verby
12/22/2010	AFFD	PHILLIPS	Affidavit of Toby McLaughlin in Opposition to Plaintiff's Motion for Partial Summary Judgment	Steve Verby
	AFFD	PHILLIPS	Affidavit of Dori Tucker in Support of Defnendats' Opposition to Plaintiff's Motion for Partial Summary Judgment	Steve Verby
	AFFD	PHILLIPS	Affidavit of Ronald Self in Support of Defendants memorandum in Opposition to Plaintiffs' Motion for Prtial Summary Judgment	Steve Verby
	MEMO	PHILLIPS	Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment	Steve Verby
	MOTN	PHILLIPS	Motion to Strike Affidavits Filed in Support of Plaintiffs' Motion for Summary Judgment	Steve Verby
	NOFH	PHILLIPS	Notice Of Hearing Re: Motion to Strike Affidavits in Support of Plaintiffs' Motion for Summary Judgment - Jan 5, 2011	Steve Verby
	NOSV	PHILLIPS	Notice Of Service Re: Defendant Gilbertson's Third Supplemental Responses to Plaintiffs' Request for Admissions, Answers to Interrogatories and Production of Documents, Set One	Steve Verby
	HRSC	PHILLIPS	Hearing Scheduled (Motion 01/05/2011 02:30 PM) to Strike Affidavits	Steve Verby
12/23/2010	MISC	KELSO	Miscellaneous-Berg &Laughlin request for transcript for Plaintiff's hearing on Motion for Order to Compel Discovery Responses and Plaintiff's Motion for Leave to Amend Plaintiff's First Amended Complaint for an Award of Punitive Damages held on Dec. 8, 2010.	Steve Verby
12/28/2010	NOTC	OPPELT	Notice of Compliance with Pretrial Order Re Plaintiffs' Expert Witness Disclosure	Steve Verby
12/29/2010	MISC	PHILLIPS	Plaintiffs' Opposition to Defendants' Motion to Strike Affidavits Filed in Support of Plaintiffs' Motion for Summary Judgment	Steve Verby
	REPL	PHILLIPS	Plaintiffs' Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment	Steve Verby
	AFFD	PHILLIPS	Affidavit of Cheryl Piehl in Support of Plaintiffs' Motion for Partial Summary Judgment'	Steve Verby
12/30/2010	NOFH	OPPELT	Amended Notice Of Hearing on Plaintiffs' Motion for Partial Summary Judgment	Steve Verby
	CONT	OPPELT	Hearing result for Motion for Partial Summary Judgment held on 01/05/2011 03:30 PM: Continued Plf's Motn	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion for Partial Summary Judgment 01/05/2011 02:30 PM) Plf's Motn	Steve Verby

Date	Code	User	Judge
12/30/2010	NOSV	OPPELT	Notice Of Service Re: Defendant Bakers' Third Supplemental Resoneses to Plaintiffs' Request for Answers to Interrogatories and Production of Documents, Set One
1/3/2011	MOTN	OPPELT	Defendants Baker and Gilbertson's Motion to Shorten Time
	NOFH	OPPELT	Notice Of Hearing Re: Motion for Protective Order
	HRSC	OPPELT	Hearing Scheduled (Motion 01/05/2011 02:30 PM) for Protective Order
	MOTN	OPPELT	Defendant's Motion for Protective Order
	AFFD	OPPELT	Affidavit of Toby McLaughlin in Support of Defendants' Motion for Protective Order
1/4/2011	AFFD	PHILLIPS	Amended Affidavit of Toby McLaughlin in Support of Defendants' Motion for Protective Order
	NOTC	PHILLIPS	Notice of Medical Condition of Defendant James Gilbertson
1/5/2011	CTLG	PHILLIPS	Hearing result for Motion for Partial Summary Judgment held on 01/05/2011 02:30 PM: Court Log- City Hall Plf's Motn
	DCHH	PHILLIPS	Hearing result for Motion for Partial Summary Judgment held on 01/05/2011 02:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 Plf's Motn
	DENY	PHILLIPS	Hearing result for Motion for Partial Summary Judgment held on 01/05/2011 02:30 PM: Motion Denied Plf's Motn
	CTLG	PHILLIPS	Hearing result for Motion held on 01/05/2011 02:30 PM: Court Log- City Hall to Strike Affidavits
	DCHH	PHILLIPS	Hearing result for Motion held on 01/05/2011 02:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 to Strike Affidavits
	DENY	PHILLIPS	Hearing result for Motion held on 01/05/2011 02:30 PM: Motion Denied to Strike Affidavits
	CTLG	PHILLIPS	Hearing result for Motion held on 01/05/2011 02:30 PM: Court Log- City Hall for Protective Order

Date	Code	User	Judge
1/5/2011	DCHH	PHILLIPS	Hearing result for Motion held on 01/05/2011 02:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 for Protective Order
1/6/2011	CMIN	RASOR	Court Minutes Hearing type: Motion for Partial Summary Judgment/ motn Hearing date: 1/5/2011 Time: 2:42 pm Courtroom: Court reporter: Val Larson Minutes Clerk: Sandra Rasor Tape Number: City Hall
		HENDRICKSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Mary Pandrea Receipt number: 0449721 Dated: 1/6/2011 Amount: \$5.00 (Check)
		HENDRICKSO	Miscellaneous Payment: Court Tape Fee Paid by: Mary Pandrea Receipt number: 0449721 Dated: 1/6/2011 Amount: \$1.25 (Check)
		HENDRICKSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Mary Pandrea Receipt number: 0449721 Dated: 1/6/2011 Amount: \$.08 (Check)
	CINF	PHILLIPS	Clerk Information - no indication who is to submit order from 1/05/11 hearing
1/7/2011	LETT	OPPELT	Letter from Terri Boyd-Davis to Judge Verby
1/11/2011	HRSC	OPPELT	Hearing Scheduled (Motion 02/23/2011 01:30 PM) for Protective Order
		OPPELT	Amended Notice Of Hearing
		BOWERS	Miscellaneous Payment: Registered Mail Fee Paid by: Pandrea, Mary Receipt number: 0449984 Dated: 1/11/2011 Amount: \$.87 (Cash)
1/12/2011	MISC	PHILLIPS	*****BEGIN FILE NO. 5*****
1/19/2011	AFFD	OPPELT	Affidavit of Service Re: Subpoena Duces Tecum Richard Del Carlo
	AFSV	OPPELT	Affidavit Of Service Re: Subpoena Duces Tecum to Rob Stratton
	NOSV	OPPELT	Notice Of Service Upon Defendant Timothy Baker of Plaintiff's Requests for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Timothy Baker, Set Two
1/21/2011	AMCO	OPPELT	Second Amended Complaint to Quiet Title, for Damages for Timber Trespass and Common Law Trespass, for Injunctive Relief, Including Claim for Punitive Damages
	MISC	OPPELT	Acknowledgement Pursuant to Rule 16(k)(7) IRCP Regarding Case Status/Mediation

Date	Code	User		Judge
1/25/2011	AFFD	OPPELT	Affidavit of Terri Boyd-Davis in Support of Plaintiff's Motion for Leave of Court to File Amended Complaint	Steve Verby
	MOTN	OPPELT	Plaintiffs' Motion and Brief for Leave of Court to File Amended Complaint	Steve Verby
	NOFH	OPPELT	Notice Of Hearing on Plaintiffs' Motion for Leave of Court to File Amended Complaint	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 02/09/2011 09:15 AM) for Leave of Court to File Amended Complaint	Steve Verby
1/26/2011	WITN	MORELAND	Defendants' Expert Witness Disclosure	Steve Verby
1/27/2011	LETT	OPPELT	Copy of a Letter from M&M Court Reporting Service, Inc. to Arthur B. Macomber	Steve Verby
1/28/2011	OBJC	OPPELT	Defendants' Objection to Plaintiffs' Motion for a Third Amended Complaint	Steve Verby
	MOTN	OPPELT	Motion to Shorten Time	Steve Verby
	MOTN	OPPELT	Motion to Strike and Motion for Preliminary Injunction; Notice of Hearing	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 02/09/2011 09:15 AM) to Strike Pleadings	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 02/09/2011 09:15 AM) for a Protective Order	Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 02/09/2011 09:15 AM) to Shorten Time	Steve Verby
	MEMO	OPPELT	Memorandum Supporting Motion to Strike and Motion for Preliminary Injunction	Steve Verby
2/3/2011		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Pandrea, Mary Receipt number: 0451090 Dated: 2/3/2011 Amount: \$7.00 (Check)	Steve Verby
2/4/2011	AFFD	PHILLIPS	Affidavit of Toby McLaughlin in Support of Defendant's Motion for Preliminary Injunction	Steve Verby
2/8/2011	MISC	PHILLIPS	Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion to Strike and Motion for Preliminary Injunction	Steve Verby
	AFFD	PHILLIPS	Affidavit of Terri Boy-Davis in Support of Plaintiff Terri Boyd-Davis' Opposition to Defendatns' Motion to Strike and Motion for Preliminary Injunction and in Support of Plaintiff's Motion to Amend Complaint	Steve Verby

Date	Code	User	Judge
2/9/2011	CMIN	ANDERSON	Steve Verby
			Court Minutes Hearing type: Motion To Strike, Amend Complaint, Hearing date: 2/9/2011 Time: 9:19 am Courtroom: Court reporter: Val Larson Minutes Clerk: Lynne Anderson Tape Number: CTRM 4 Toby McLaughlin Stephen Snedden Terry Boyd-Davis Brian Davis Jean Coleman
	CTLG	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: Court Log- Crtrm 4 for Leave of Court to File Amended Complaint
	DCHH	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 for Leave of Court to File Amended Complaint
	GRNT	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: Motion Granted for Leave of Court to File Amended Complaint
	CTLG	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: Court Log-Crtrm 4 to Shorten Time
	DCHH	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Less than 100 to Shorten Time
	GRNT	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: Motion Granted to Shorten Time
	CTLG	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: Court Log-Crtrm 4 for a Protective Order
	CONT	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: Continued for a Protective Order (to be heard 2/23/11)
	CTLG	PHILLIPS	Steve Verby
			Hearing result for Motion held on 02/09/2011 09:15 AM: Court Log- Crtrm 4 to Strike Pleadings

Date	Code	User	Judge
2/9/2011	DCHH	PHILLIPS	Hearing result for Motion held on 02/09/2011 09:15 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 to Strike Pleadings
	MISC	PHILLIPS	Plaintiffs given 48 hrs to sign pleadings; if not, Judge will Strike pleadings
	MISC	PHILLIPS	Snedden to submit order
2/11/2011		KELSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Pandrea, Mary Receipt number: 0451685 Dated: 2/11/2011 Amount: \$5.00 (Check)
		KELSO	Miscellaneous Payment: Court Tape Fee Paid by: Pandrea, Mary Receipt number: 0451685 Dated: 2/11/2011 Amount: \$1.25 (Check)
		KELSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Pandrea, Mary Receipt number: 0451685 Dated: 2/11/2011 Amount: \$.08 (Check)
	ORDR	PHILLIPS	Order for Signatures and Denying Preliminary Injunction
	MISC	PHILLIPS	copy of letter from M & M Court Reporting to Richard Del Carlo re transcript
	MISC	PHILLIPS	copy of letter from M & M Court Reporting to Robert Lynn Stratton re transcript
	NOTC	PHILLIPS	Notice of Service of Plaintiffs' Expert Witness Disclosure With Signatures of All Plaintiffs
2/14/2011	ORDR	PHILLIPS	Order Granting Plaintiffs' Leave to Amend Their Second Amended Complaint to Include a Claim of Adverse Possession Under Written Claim of Title
	MISC	OPPELT	*****Begin File 6*****
2/15/2011	MISC	OPPELT	Plaintiff Terry Boyd-Davis' Opposition to Defendants' Motion for Protective Order
	AFFD	OPPELT	Affidavit of Terri Boyd-Davis' in Support of Plaintiff's Opposition to Defendants' Motion for Protective Order
		BOWERS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Mary Pandrea Receipt number: 0451891 Dated: 2/15/2011 Amount: \$58.00 (Check) For: Pandrea, John (defendant)
	LETT	OPPELT	Letter from John Pandrea
	CINF	OPPELT	Copy of the Letter from John Pandrea Sent to all Parties per Sylvia/Law Clerk

Date	Code	User	Judge
2/16/2011		PHILLIPS	Miscellaneous Payment: Tape/copy Time Fee Paid by: Terri Boyd-Davis Receipt number: 0451966 Dated: 2/16/2011 Amount: \$15.00 (Check)
		PHILLIPS	Miscellaneous Payment: Court Tape Fee Paid by: Steve Verby Terri Boyd-Davis Receipt number: 0451966 Dated: 2/16/2011 Amount: \$3.75 (Check)
		PHILLIPS	Miscellaneous Payment: Court Tape Sales Tax Paid by: Terri Boyd-Davis Receipt number: 0451966 Dated: 2/16/2011 Amount: \$.24 (Check)
2/22/2011	NOTD	OPPELT	Notice Of Deposition of Carol Baker
	NOTD	OPPELT	Notice Of Deposition of Timothy Baker
	MISC	OPPELT	Plaintiff Terri Boyd-Davis' Request to Set Final Pre-Trial Conference
	MOTC	PHILLIPS	Plaintiff's Motion To Compel Responses to Plaintiffs' Requests for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Timothy Baker, Set Two
	MOTN	PHILLIPS	Motion to Shorten Time
	AFFD	PHILLIPS	Affidavit of Terri Boyd-Davis in Support of Plaintiff's Motion to Compel
	MISC	PHILLIPS	received (Proposed) Order Granting Plaintiff's Motion to Compel Responses to Plaintiffs' Requests for Admissions, Answers to Interrogatories and Production of Documents to Defendant Timothy Baker, Set Two
	NOFH	PHILLIPS	Notice Of Hearing Re: Plaintiff's Motion to Shorten Time and Motion to Compel Discovery Responses - Feb 23, 2011
	HRSC	PHILLIPS	Hearing Scheduled (Motion to Compel 02/23/2011 01:30 PM) and to Shorten Time
	NSDR	PHILLIPS	Notice Of Service Of Discovery Responses - Notice of Service Upon Defendant Timothy Baker of Plaintiff Terri Boyd-Davis' Supplemental Responses to Defendant Bakers' First Set of Interrogatories and Requests for Production to Plaintiffs Davis
	NOSV	OPPELT	Notice Of Service Re: Subpoena Duces Tecum to Nellie Gilbertson
	NOSV	OPPELT	Notice Of Service Re: Defendant Timothy Baker's Responses to Plaintiffs' Request for Admissions, Answers to Interrogatories and Production of Documents, Set Two
	NOSV	OPPELT	Notice Of Service RE: Subpoena Duces Tecum to Mary Pandrea
	NOSV	OPPELT	Notice Of Service RE: Subpoena Duces Tecum to Dan Hunt

Date	Code	User	Judge
2/22/2011	NOSV	OPPELT	Notice Of Service RE: Subpoena Duces Tecum to David Evans
	NOSV	OPPELT	Notice Of Service RE: Subpoena Duces Tecum to Tim Kastning
2/23/2011	CMIN	SECK	Court Minutes Hearing type: Motion for Protective Order/Motion Hearing date: 2/23/2011 Time: 1:29 pm Courtroom: Court reporter: Val Larson Minutes Clerk: Melissa Seck Tape Number: crtm 4
	CTLG	PHILLIPS	Hearing result for Motion held on 02/23/2011 01:30 PM: Court Log- Crtrm 4 for Protective Order
	DCHH	PHILLIPS	Hearing result for Motion held on 02/23/2011 01:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 for Protective Order
	GRNT	PHILLIPS	Hearing result for Motion held on 02/23/2011 01:30 PM: Motion Granted for Protective Order (exceptions noted on record)
	CTLG	PHILLIPS	Hearing result for Motion to Compel held on 02/23/2011 01:30 PM: Court Log- Crtrm 4 and to Shorten Time
	DCHH	PHILLIPS	Hearing result for Motion to Compel held on 02/23/2011 01:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 and to Shorten Time
	GRNT	PHILLIPS	Hearing result for Motion to Compel held on 02/23/2011 01:30 PM: Motion Granted and to Shorten Time
	AFSV	OPPELT	Affidavit Of Service of Supoenas on Non-Party Witness on Glahe & Associates Professional Land Surveyors
	AFSV	OPPELT	Affidavit Of Service of Supoenas on Non-Party Witness Stephen Smith
	AFSV	OPPELT	Affidavit Of Service
	NOTC	OPPELT	Notice of Intent to Take Default of Defendant John Pandrea
	AMCO	OPPELT	Third Amended Complaint to Quiet Title, for Damages for Timber Trespass and Common Law Trespass, for Injunctive Relief, Including Claim for Punitive Damages



Date	Code	User	Judge
2/28/2011		PHILLIPS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0452528 Dated: 2/28/2011 Amount: \$25.00 (Check)
3/1/2011	MISC	OPPELT	First Amended Defendants' Expert Witness Disclosure
	MISC	OPPELT	*****BEGIN FILE 7*****
3/2/2011		KELSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Pandrea, Mary Receipt number: 0452677 Dated: 3/2/2011 Amount: \$5.00 (Check)
		KELSO	Miscellaneous Payment: Court Tape Fee Paid by: Pandrea, Mary Receipt number: 0452677 Dated: 3/2/2011 Amount: \$1.25 (Check)
		KELSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Pandrea, Mary Receipt number: 0452677 Dated: 3/2/2011 Amount: \$.08 (Check)
		KELSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0452678 Dated: 3/2/2011 Amount: \$9.00 (Check)
	ANSW	OPPELT	Defendant John Pandrea's Answer to Plaintiff's Notice of Intent to Take Default of Defendant Jon Pandrea, Defendant John Pandrea's Motion for Dismissal of all Charges Brought by Plaintiffs Against Defendant John Pandrea , and Defendant John Pandrea's Objection to Plaintiff's Unauthorized Practice of Law
	CESV	OPPELT	Certificate Of Service
	ANSW	PHILLIPS	Defendants/Counterclaimant Baker's Answer to Plaintiffs' Third Amended Complaint, Affirmative Defenses and Counterclaims
	MISC	PHILLIPS	Certificate of Service Re: First Amended Defendants' Expert Witness Disclosure
3/4/2011	NOTC	OPPELT	Notice to Counsel
3/7/2011	STIP	PHILLIPS	Stipulation and Order of dismissal with Prejudice Re: Claims by and Against Gilbertsons
	NOTD	PHILLIPS	Amended Notice Of Taking Deposition of Timothy Baker
	NOTD	PHILLIPS	Amended Notice Of Taking Deposition of Carol Baker
3/9/2011	ORDR	PHILLIPS	Order of Dismissal With Prejudice - (re Claims by and Against Gilbertsons - on Page 2 of Stipulation)

Date	Code	User	Judge
3/9/2011	CDIS	PHILLIPS	Civil Disposition entered for: Gilbertson, James, Defendant; Gilbertson, Nellie, Defendant; Boyd-Davis, Terry, Plaintiff; Coleman, Jean L, Plaintiff; Davis, Brian F, Plaintiff. Filing date: 3/9/2011
3/10/2011	AFSV	PHILLIPS	Affidavit Of Service of Trial Subpoena
3/11/2011	NOTC	PHILLIPS	Notice of Cancellation of Depositions of Defendants Timothy and Carol Baker
3/14/2011	PLAE	PHILLIPS	Plaintiff Exhibit List
	WITN	PHILLIPS	Witness List - Plaintiff's
	APDF	PHILLIPS	Application For Entry of Default of Defendant John Pandrea
	AFFD	PHILLIPS	Affidavit of Terri Boyd-Davis in Support of Application for Entry of Default of Defendant John Pandrea
	DEFE	PHILLIPS	Defendant(s) Exhibit List
	WITN	PHILLIPS	Defendant's Witness List
3/15/2011	WAVE	PHILLIPS	Waiver and Acceptance of Service (re: Nellie Gilbertson) (not notarized)
	WAVE	PHILLIPS	Waiver and Acceptance of Service (re David Evans)
	MISC	PHILLIPS	received Defendants exhibits A thru III
3/16/2011	WAVE	PHILLIPS	Waiver and Acceptance of Service (of trial subpoena - Alliance Title and Escrow)
3/17/2011	NOSV	OPPELT	Notice Of Service Re: Defendant Timothy Baker's Third Supplemental Responses to Plaintiffs' Request for Admissions, Answers to Interrogatories and Production of Documents
3/18/2011	EXHB	OPPELT	Defendants' First Amended Exhibit List
3/21/2011	MISC	PHILLIPS	Plaintiff Terri Boyd Davis' Proposed Findings of Fact and Conclusions of Law
	BREF	PHILLIPS	Plaintiff Terri Boyd-Davis' Trial Brief
	PLAE	PHILLIPS	Plaintiff Amended Exhibit List
	MOTN	PHILLIPS	Plaintiff Terri Boyd-Davis' Motion in Limine Re Exclusion of Testimony of Defendants' Designated Expert Witnesses
	AFFD	PHILLIPS	Affidavit of Terri Boyd Davis in Support of Plaintiff Terri Boyd Davis' Motion in Limine Re Exclusion of Testimony of Defendants' Designated Expert Witnesses
	BREF	PHILLIPS	Trial Brief (McLaughlin)
3/23/2011	MISC	PHILLIPS	Defendant Bakers Opposition to Plaintiffs' Application for Entry of Default of Defendant John Pandrea
	MISC	PHILLIPS	Defendant Bakers' Proposed Findings of fact and Conclusions of Law

Date	Code	User		Judge
3/24/2011	MOTN	PHILLIPS	Motion to Shorten Time	Steve Verby
	MOTN	PHILLIPS	Plaintiff Terri Boyd-Davis Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply With Discovery Order	Steve Verby
	AFFD	PHILLIPS	Affidavit of Terri Boyd- Davis in Support of Her Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply with Discovery Order	Steve Verby
	NOFH	PHILLIPS	Notice Of Hearing on Plaintiff Terri Boyd- Davis' Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply With Discovery Order, and Motion to Shorten Time - March 28, 2011	Steve Verby
	HRSC	PHILLIPS	Hearing Scheduled (Motion 03/28/2011 09:00 AM) to Shorten Time	Steve Verby
	HRSC	PHILLIPS	Hearing Scheduled (Motion 03/28/2011 09:00 AM) for Sanctions	Steve Verby
	AFFD	PHILLIPS	Affidavit of Toby McLaughlin Supporting Defendants' Response to Plaintiffs' Motion in Limine	Steve Verby
	RSPN	PHILLIPS	Defendant's Response to Plaintiff's Motion in Limine	Steve Verby
	NTSD	PHILLIPS	Notice Of Service Of Discovery Documents - Defendant Baker's Amended Response to Plaintiffs' Request for Admission, Answers to Interrogatories and Production of Documents, Set Two	Steve Verby
	MISC	OPPELT	*****Begin File 8*****	Steve Verby
3/25/2011	AFFD	PHILLIPS	Affidavit of Service (of trial subpoena)	Steve Verby
3/28/2011	EXHB	PHILLIPS	Plaintiff's Second Amended Exhibit List	Steve Verby
	MISC	PHILLIPS	copy of letter from M & M Court Reporting to McLaughlin with attached errata sheets	Steve Verby
	MISC	PHILLIPS	copy of letter from M & M Court Reporting to Terri Boyd-Davis re Gilbertson deposition	Steve Verby
	DCHH	PHILLIPS	Hearing result for Motion held on 03/28/2011 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: over 500 to Shorten Time	Steve Verby
	GRNT	PHILLIPS	Hearing result for Motion held on 03/28/2011 09:00 AM: Motion Granted to Shorten Time	Steve Verby
	CTLG	PHILLIPS	Hearing result for Court Trial - 4 Days held on 03/28/2011 09:00 AM: Court Log- Crtrm 4 Day 1	Steve Verby
	CTST	PHILLIPS	Hearing result for Court Trial - 4 Days held on 03/28/2011 09:00 AM: Court Trial Started Day 1	Steve Verby

Date	Code	User	Judge
3/28/2011	DCHH	PHILLIPS	Hearing result for Court Trial - 4 Days held on 03/28/2011 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Day 1 over 100
	DCHH	PHILLIPS	Hearing result for Court Trial held on 03/29/2011 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Day 2 over 100
	CTLG	PHILLIPS	Hearing result for Motion held on 03/28/2011 09:00 AM: Court Log- Crtrm 4 for Sanctions
	DCHH	PHILLIPS	Hearing result for Motion held on 03/28/2011 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: over 100 for Sanctions
3/29/2011	CTLG	PHILLIPS	Hearing result for Court Trial held on 03/29/2011 09:00 AM: Court Log- Crtrm 4 Day 2
3/31/2011	CMIN	AYERLE	Court Minutes Hearing type: Court Trial - Day 1 Hearing date: 3/28/2011 Time: 9:31 am Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 4 Plaintiffs Pro se Toby McLaughlin for Def
	CMIN	AYERLE	Court Minutes Hearing type: Court Trial - Day 2 Hearing date: 3/29/2011 Time: 9:02 am Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 4 Plaintiffs Pro Se Toby McLaughlin for Defendants Baker
	CMIN	AYERLE	Court Minutes Hearing type: Court Trial Day 3 Hearing date: 3/30/2011 Time: 9:04 am Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 4 Plaintiffs Pro se Toby McLaughlin

Date	Code	User	Judge
4/1/2011	CMIN	AYERLE	Steve Verby
		Court Minutes Hearing type: Court Trial - Day 4 Hearing date: 3/31/2011 Time: 9:03 am Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 4 Terri Boyd Davis Brian Davis Jean Coleman Toby McLaughlin for Defendants Baker	
4/4/2011	HRSC	CMOORE	Steve Verby
		Hearing Scheduled (Hearing Scheduled 04/06/2011 03:00 PM) Announce Decision	
4/5/2011	HRVC	CMOORE	Steve Verby
		Hearing result for Hearing Scheduled held on 04/06/2011 03:00 PM: Hearing Vacated Announce Decision	
4/6/2011	HRSC	CMOORE	Steve Verby
		Hearing Rescheduled (Hearing Scheduled 04/08/2011 02:00 PM) Announce Decision	
4/7/2011		BOWERS	Steve Verby
		Miscellaneous Payment: Tape/copy Time Fee Paid by: Mary Pandrea Receipt number: 0454778 Dated: 4/7/2011 Amount: \$20.00 (Check)	
		BOWERS	Steve Verby
		Miscellaneous Payment: Court Tape Fee Paid by: Mary Pandrea Receipt number: 0454778 Dated: 4/7/2011 Amount: \$5.00 (Check)	
		BOWERS	Steve Verby
		Miscellaneous Payment: Court Tape Sales Tax Paid by: Mary Pandrea Receipt number: 0454778 Dated: 4/7/2011 Amount: \$.33 (Check)	
4/11/2011	MISC	PHILLIPS	Steve Verby
4/14/2011		HENDRICKSO	Steve Verby
		Miscellaneous Payment: Tape/copy Time Fee Paid by: Terry L. Davis Receipt number: 0455131 Dated: 4/14/2011 Amount: \$20.00 (Cash)	
		HENDRICKSO	Steve Verby
		Miscellaneous Payment: Court Tape Fee Paid by: Terry L. Davis Receipt number: 0455131 Dated: 4/14/2011 Amount: \$5.00 (Cash)	
		HENDRICKSO	Steve Verby
		Miscellaneous Payment: Court Tape Sales Tax Paid by: Terry L. Davis Receipt number: 0455131 Dated: 4/14/2011 Amount: \$.32 (Cash)	
4/25/2011	CONT	CMOORE	Steve Verby
		Continued (Hearing Scheduled 04/28/2011 02:00 PM) Announce Decision	
		CMOORE	Steve Verby
		Notice of Hearing	

Date	Code	User	Judge
4/28/2011	CMIN	AYERLE	Court Minutes Hearing type: Announce Decision Hearing date: 4/28/2011 Time: 2:01 pm Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 3 Plaintiffs Pro Se Toby McLaughlin for Defense Steve Verby
	CTLG	PHILLIPS	Hearing result for Motion held on 03/28/2011 09:00 AM: Court Log- Crtrm 4 to Shorten Time Steve Verby
	CTLG	PHILLIPS	Hearing result for Hearing Scheduled held on 04/28/2011 02:00 PM: Court Log- Announce Decision Steve Verby
	DCHH	PHILLIPS	Hearing result for Hearing Scheduled held on 04/28/2011 02:00 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Announce Decision 1100 pages total for trial and decision Steve Verby
	DPHR	PHILLIPS	Hearing result for Hearing Scheduled held on 04/28/2011 02:00 PM: Disposition With Hearing Announce Decision Steve Verby
	ORDR	PHILLIPS	Order Determining Liability and Order for Removal of Chain Link Fence Steve Verby
	CDIS	PHILLIPS	Civil Disposition entered for: Pandrea, John, Defendant; Pandrea, Mary, Defendant; Boyd-Davis, Terry, Plaintiff; Coleman, Jean L, Plaintiff; Davis, Brian F, Plaintiff. Filing date: 4/28/2011 Steve Verby
	STAT	PHILLIPS	STATUS CHANGED: closed Steve Verby
5/2/2011	MISC	KELSO	ESTIMATE OF TRANSCRIPT-from Val Larson \$3,575.00 Steve Verby
5/4/2011		KELSO	Miscellaneous Payment: Registered Mail Fee Paid by: Berg & McLaughlin Receipt number: 0456225 Dated: 5/4/2011 Amount: \$.01 (Check) Steve Verby
		KELSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Berg & McLaughlin Receipt number: 0456225 Dated: 5/4/2011 Amount: \$25.00 (Check) Steve Verby
		KELSO	Miscellaneous Payment: Court Tape Fee Paid by: Berg & McLaughlin Receipt number: 0456225 Dated: 5/4/2011 Amount: \$6.25 (Check) Steve Verby
		KELSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Berg & McLaughlin Receipt number: 0456225 Dated: 5/4/2011 Amount: \$.40 (Check) Steve Verby
5/6/2011	LETT	OPPELT	Letter from Terri Boyd-Davis to Judge Verby Steve Verby
	ORDR	PHILLIPS	Amended Order Determining Liability and order for Removal of Chain Link Fence Steve Verby

Date	Code	User	Judge
5/10/2011		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Pandrea, Mary Receipt number: 0456539 Dated: 5/10/2011 Amount: \$7.00 (Check) Steve Verby
5/12/2011	MOTN	PHILLIPS	Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification Steve Verby
	MEMO	PHILLIPS	Memorandum in Support of Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification Steve Verby
5/13/2011		KELSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Boyd-Davis, Terry Receipt number: 0456760 Dated: 5/13/2011 Amount: \$6.00 (Check) Steve Verby
5/16/2011	NOFH	PHILLIPS	Notice Of Hearing Re: Moton for Reconsideration of Trial Decision and Motion for Clarification - July 6, 2011 Steve Verby
	HRSC	PHILLIPS	Hearing Scheduled (Motion 07/06/2011 10:15 AM) for Reconsideration and Clarification Steve Verby
6/8/2011	MOTN	OPPELT	Plaintiff Terri Boyd-Davis' Motion to Commence Damages Stage of Trial Steve Verby
	NOFH	OPPELT	Notice Of Hearing on Motion to Commence Damages Stage of Trial Steve Verby
	HRSC	OPPELT	Hearing Scheduled (Motion 06/22/2011 09:30 AM) to Commence Damages Stage of Trial Steve Verby
6/22/2011		KELSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Boyd-Davis, Terry Receipt number: 0458819 Dated: 6/22/2011 Amount: \$5.00 (Check) Steve Verby
		KELSO	Miscellaneous Payment: Court Tape Fee Paid by: Boyd-Davis, Terry Receipt number: 0458819 Dated: 6/22/2011 Amount: \$1.25 (Check) Steve Verby
		KELSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Boyd-Davis, Terry Receipt number: 0458819 Dated: 6/22/2011 Amount: \$.08 (Check) Steve Verby
	CMIN	AYERLE	Court Minutes Hearing type: Motion to Commence Damages State of Trial Hearing date: 6/22/2011 Time: 9:33 am Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 4 Terry Boyd-Davis pro se for PI Toby McLaughlin for Def Steve Verby
	CTLG	PHILLIPS	Hearing result for Motion held on 06/22/2011 09:30 AM: Court Log- Crtrm 4 to Commence Damages Stage of Trial Steve Verby

Date	Code	User	Judge
6/22/2011	DCHH	PHILLIPS	Hearing result for Motion held on 06/22/2011 09:30 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: less than 100 to Commence Damages Stage of Trial
	ADVS	PHILLIPS	Hearing result for Motion held on 06/22/2011 09:30 AM: Case Taken Under Advisement to Commence Damages Stage of Trial
6/24/2011		PHILLIPS	Miscellaneous Payment: Tape/copy Time Fee Paid by: Pandrea, Mary Receipt number: 0458974 Dated: 6/24/2011 Amount: \$5.00 (Check)
		PHILLIPS	Miscellaneous Payment: Court Tape Fee Paid by: Pandrea, Mary Receipt number: 0458974 Dated: 6/24/2011 Amount: \$1.25 (Check)
		PHILLIPS	Miscellaneous Payment: Court Tape Sales Tax Paid by: Pandrea, Mary Receipt number: 0458974 Dated: 6/24/2011 Amount: \$.08 (Check)
		KELSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Ethel M. Boyd Receipt number: 0458998 Dated: 6/24/2011 Amount: \$70.00 (Check)
		KELSO	Miscellaneous Payment: Court Tape Fee Paid by: Ethel M. Boyd Receipt number: 0458998 Dated: 6/24/2011 Amount: \$17.50 (Check)
		KELSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Ethel M. Boyd Receipt number: 0458998 Dated: 6/24/2011 Amount: \$1.12 (Check)
	MISC	PHILLIPS	written request from Mary Pandrea to have name removed from case
	MISC	PHILLIPS	written request from Gilbertsons to have names removed from case
6/29/2011	MISC	PHILLIPS	Plaintiff Terri Boyd-Davis' Opposition to Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification
7/6/2011	CMIN	RASOR	Court Minutes Hearing type: Motion to Reconsider and Clarification Hearing date: 7/6/2011 Time: 10:24 am Courtroom: Court reporter: Debra Burnham Minutes Clerk: Sandra Rasor Tape Number: 4
	CTLG	PHILLIPS	Hearing result for Motion scheduled on 07/06/2011 10:15 AM: Court Log- Crtrm 4 for Reconsideration and Clarification



Date	Code	User	Judge
7/6/2011	DCHH	PHILLIPS	Hearing result for Motion scheduled on 07/06/2011 10:15 AM: District Court Hearing Held Court Reporter: Debra Burnham Number of Transcript Pages for this hearing estimated: less than 100 for Reconsideration and Clarification
	ADVS	PHILLIPS	Hearing result for Motion scheduled on 07/06/2011 10:15 AM: Case Taken Under Advisement for Reconsideration and Clarification
9/2/2011	ORDR	CMOORE	Decision Re: Bakers' Motion for Clarification and Reconsideration (13 pages)
	ORDR	CMOORE	Order Denying Entry of Default Against John Pandrea (6 pages)
9/19/2011		PHILLIPS	Miscellaneous Payment: Tape/copy Time Fee Paid by: Mary Pandrea Receipt number: 0463162 Dated: 9/19/2011 Amount: \$5.00 (Check)
		PHILLIPS	Miscellaneous Payment: Court Tape Fee Paid by: Mary Pandrea Receipt number: 0463162 Dated: 9/19/2011 Amount: \$1.25 (Check)
		PHILLIPS	Miscellaneous Payment: Court Tape Sales Tax Paid by: Mary Pandrea Receipt number: 0463162 Dated: 9/19/2011 Amount: \$.08 (Check)
9/26/2011		PHILLIPS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0463464 Dated: 9/26/2011 Amount: \$6.00 (Cash)
9/30/2011	MOTN	PHILLIPS	Motion for 54(b) Certification and Notice of Hearing - Dec 7, 2011
	MEMO	PHILLIPS	Memorandum in Support of Motion for 54(b) Certification
	HRSC	PHILLIPS	Hearing Scheduled (Motion 12/07/2011 10:00 AM) for 54(b) Certification
11/4/2011	AFFD	CMOORE	Affidavit of Nellie Gilbertson in Support of Motion and Memorandum to Enforce Settlement Agreement and Release Lis Pendens
11/10/2011	AFFD	HENDRICKSO	Affidavit of Toby McLaughlin In Support of Motion And Memorandum to Enforce Settlement Agreement and Release Lis Pendens
	AFFD	HENDRICKSO	Amended Affidavit of Nellie Gilbertson in Support of Motion and Memorandum to Enforce Settlement Agreement and Release Lis Pendens
	MOTN	HENDRICKSO	Motion and Memorandum to Enforce Settlement Agreement and Released Lis Pendens
11/15/2011	OBJC	HENDRICKSO	Defendant Bakers' Objection to Plaintiff's Proposed Judgment
	NOHG	HENDRICKSO	Notice of Hearing re: Defendants Baker's Objection to Plaintiffs Proposed Judgment

Date	Code	User	Judge
11/15/2011	HRSC	HENDRICKSO	Hearing Scheduled (Motion 01/04/2012 10:00 AM) Defendants Objection to Plaintiff's Proposed Judgmnet
11/16/2011		HENDRICKSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0465722 Dated: 11/16/2011 Amount: \$34.00 (Check)
11/17/2011	NOHG	HENDRICKSO	Notice of Hearing re: Motion and Memorandum to Enforce Settlement Agreement and Release of Lis Pendens
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 12/21/2011 11:30 AM) Moton and Memorandum to Enforce Settlement Agreement and Release Lis Pendens
11/22/2011	MOTN	OPPELT	Motion to Appear by Telephone
11/25/2011		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Boyd-Davis, Terry Receipt number: 0466009 Dated: 11/25/2011 Amount: \$2.00 (Cash)
11/28/2011	MISC	HENDRICKSO	Plaintiffs' Opposition to Defendants' to Defendants' Motion For 54(b) Certification
	AFFD	HENDRICKSO	Affidavit of Brian F. Davis In Support of Plaintiffs' Opposition to Defendants' Motion For 54(b) Certification
11/29/2011	NOFH	OPPELT	Notice Of Hearing Re: Defendants Baker's Motion for 54(B) Certification
	CONT	OPPELT	Hearing result for Motion scheduled on 12/07/2011 10:00 AM: Continued for 54(b) Certification
	HRSC	OPPELT	Hearing Scheduled (Motion 01/04/2012 10:00 AM) for 54(b) Certification
12/9/2011		HENDRICKSO	Plaintiff Terri Boyd-Davis' Opposition to Defendants Gilbertsons' Motion To Enforce Settlement Agreement and Release Lis Pendens
	AFFD	HENDRICKSO	Affidavit of Terri Boyd-David in Support of Plaintiff Terri Boyd-Davis' Opposition to Defendants Gilbertsons' Motion To Enforce Settlement and Release Lis Pendens
12/21/2011	CMIN	SECK	Court Minutes Hearing type: Motion to Enforce Settlement Agreement Hearing date: 12/21/2011 Time: 11:35 am Courtroom: Court reporter: Val Larson Minutes Clerk: Melissa Seck Tape Number: ct 2 Terry Boyd-Davis Toby McLaughlin

Date	Code	User	Judge
12/21/2011	DCHH	OPPELT	Hearing result for Motion scheduled on 12/21/2011 11:30 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: and Memorandum to Enforce Settlement Agreement and Release Lis Pendens - Less Than 100 Pages
	GRNT	OPPELT	Hearing result for Motion scheduled on 12/21/2011 11:30 AM: Motion Granted to Release Lis Pendens
	DENY	OPPELT	Hearing result for Motion scheduled on 12/21/2011 11:30 AM: Motion Denied to Enforce Settlement Agreement
12/28/2011	RSPN	HENDRICKSO	Plaintiff Terri Boyd-Davis Repsonse to Defendants Bakers' Objection to Plaintiffs' Proposed Judgment
1/4/2012	ORDR	OPPELT	Order to Quash Lis Pendens
		HENDRICKSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Mary Pandrea Receipt number: 0467587 Dated: 1/4/2012 Amount: \$5.00 (Check)
		HENDRICKSO	Miscellaneous Payment: Court Tape Fee Paid by: Mary Pandrea Receipt number: 0467587 Dated: 1/4/2012 Amount: \$1.25 (Check)
		HENDRICKSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Mary Pandrea Receipt number: 0467587 Dated: 1/4/2012 Amount: \$.08 (Check)
	CMIN	RASOR	Court Minutes Hearing type: Motion Hearing date: 1/4/2012 Time: 1:18 pm Courtroom: Court reporter: Anne Brownell Minutes Clerk: Sandra Rasor Tape Number: 2
	DCHH	OPPELT	Hearing result for Motion scheduled on 01/04/2012 10:00 AM: District Court Hearing Held Court Reporter: Anne Brownell Number of Transcript Pages for this hearing estimated: for 54(b) Certification - Less Than 100 Pages
	DCHH	OPPELT	Hearing result for Hearing Scheduled scheduled on 01/04/2012 10:00 AM: District Court Hearing Held Court Reporter: Anne Brownell Number of Transcript Pages for this hearing estimated: Defendants Objection to Plaintiff's Proposed Judgment - Less Than 100 Pages
1/5/2012		DRIVER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Berg & McLaughlin Receipt number: 0467699 Dated: 1/5/2012 Amount: \$2.00 (Check)

Date	Code	User	Judge
1/5/2012		DRIVER	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Berg & McLaughlin Receipt number: 0467699 Dated: 1/5/2012 Amount: \$1.00 (Check) Steve Verby
1/6/2012	LETT	OPPELT	Letter from Terri Boyd-Davis Regarding Error on Order to Quash Lis Pendens Steve Verby
	ORDR	HENDRICKSO	Amended Order to Quash Lis Pendens Steve Verby
1/11/2012		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Stephanie Allen Receipt number: 0467902 Dated: 1/11/2012 Amount: \$3.00 (Check) Steve Verby
		BOWERS	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Stephanie Allen Receipt number: 0467902 Dated: 1/11/2012 Amount: \$1.00 (Check) Steve Verby
1/17/2012		BOWERS	Miscellaneous Payment: Tape/copy Time Fee Paid by: Pandrea, Mary Receipt number: 0468107 Dated: 1/17/2012 Amount: \$5.00 (Check) Steve Verby
		BOWERS	Miscellaneous Payment: Court Tape Fee Paid by: Pandrea, Mary Receipt number: 0468107 Dated: 1/17/2012 Amount: \$1.25 (Check) Steve Verby
		BOWERS	Miscellaneous Payment: Court Tape Sales Tax Paid by: Pandrea, Mary Receipt number: 0468107 Dated: 1/17/2012 Amount: \$.08 (Check) Steve Verby
1/19/2012	ORDR	HENDRICKSO	***CORRECTED** Order to Release Lis Pendens (re: Gilbertson's Property) Steve Verby
1/20/2012	BREF	OPPELT	Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment Steve Verby
1/23/2012	NOTC	OPPELT	Notice of Intention of Plaintiff Terri Boyd-Davis to File Opposition to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment Steve Verby
	NOTC	OPPELT	Notice of Intention of Plaintiff Terri Boyd-Davis to File Opposition to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment Steve Verby
1/24/2012		DRIVER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Berg & McLaughlin Receipt number: 0468485 Dated: 1/24/2012 Amount: \$3.00 (Check) Steve Verby
		DRIVER	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Berg & McLaughlin Receipt number: 0468485 Dated: 1/24/2012 Amount: \$1.00 (Check) Steve Verby
1/26/2012		DRIVER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Pandrea, Mary Receipt number: 0468572 Dated: 1/26/2012 Amount: \$3.00 (Cash) Steve Verby

Date	Code	User	Judge
1/30/2012	MISC	OPPELT	Plaintiff Terri Boyd-Davis' Response to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment
1/31/2012		BOWERS	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Berg & McLaughlin Receipt number: 0468795 Dated: 1/31/2012 Amount: \$1.50 (Check)
		BOWERS	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Berg & McLaughlin Receipt number: 0468795 Dated: 1/31/2012 Amount: \$1.00 (Check)
2/3/2012	RSPN	HENDRICKSO	Plaintiff Terri Boyd-Davis' Response to Defendant Bakers' Supplemental Brief to Objection to Plaintiffs' Proposed Judgment
3/28/2012	ORDR	OPPELT	Order for Further Hearing Re: Defendants' Objection to Plaintiffs' Proposed Judgment
	HRSC	OPPELT	Hearing Scheduled (Hearing Scheduled 04/18/2012 01:30 PM) Re: Hearing on the Proposed Judgment
4/18/2012	CMIN	AYERLE	Court Minutes Hearing type: Hearing on Proposed Judgment Hearing date: 4/18/2012 Time: 1:42 pm Courtroom: Court reporter: Anne Brownell Minutes Clerk: Susan Ayerle Tape Number: 2 Terri Boyd Davis pro se Jean Coleman pro se Toby McLaughlin for defendant(s)
	EXHB	OPPELT	Exhibit List
	DCHH	OPPELT	Hearing result for Hearing Scheduled scheduled on 04/18/2012 01:30 PM: District Court Hearing Held Court Reporter: Anne Brownell Number of Transcript Pages for this hearing estimated: Re: Hearing on the Proposed Judgment - More Than 100 Pages
4/30/2012	BREF	HENDRICKSO	Plaintiff Terri Boyd-David Supplemental Brief re: Plaintiffs Quiet Title Claims Under The Theory of Boundary by Agreement
	CESV	HENDRICKSO	Certificate of Service of Plaintiff Terri Boyd-David Supplemental Brief re: Plaintiffs Quiet Title Claims Under the Theory of Boundary by Agreement
	BREF	HENDRICKSO	Defendant Bakers' Post-Trial Brief
7/13/2012	MEMO	HENDRICKSO	Memorandum Decision re: Defendants' Objection to Plaintiffs' Proposed Judgment
	MEMO	HENDRICKSO	Memorandum Decision re: Remaining Liability Causes of Action In Plaintiffs' Third Amended Complaint

Date	Code	User	Judge
7/17/2012		HENDRICKSO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Ethal Receipt number: 0476579 Dated: 7/17/2012 Amount: \$26.00 (Cash)
7/24/2012	MOTN	BOWERS	Special Appearance Motion for Dismissal without Argument
8/7/2012	LETT	OPPELT	Letter from Terry Boyd-Davis
	ORDR	OPPELT	Order Dismissing Defendant John Pandrea (ONLY)
	CDIS	HENDRICKSO	Civil Disposition entered for: Pandrea, John, Defendant. Filing date: 8/7/2012
8/14/2012	OBJC	HENDRICKSO	Defendant Bakers' Objection to Letter Filed by Plaintiff Terri Boyd-Davis
	NOHG	HENDRICKSO	Notice of Hearing on Motion For Reconsideration
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 09/19/2012 10:00 AM) Motion for Reconsideration
8/15/2012	OBJC	HENDRICKSO	Defendant Bakers' Objection to Letter Filed by Plaintiff Terri Boyd-David
9/5/2012	NOTC	HENDRICKSO	Notice of Change of Hearing Date on Plaintiff Terri Boyd-Davis Motion For Reconsideration of Memorandum Decision re: Remaining Causes of Action in Plaintiffs' Third Amended Complaint
	HRVC	HENDRICKSO	Hearing result for Motion scheduled on 09/19/2012 10:00 AM: Hearing Vacated for Reconsideration -
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/17/2012 10:00 AM) Reconsideration
9/7/2012	NOTC	HENDRICKSO	Notice of Submission of Survey, Legal Description, and Letter from Surveyor Rover Stratton
9/13/2012	MISC	OPPELT	Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman
	MISC	OPPELT	Rule 54(b) Certificate
9/18/2012		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Ethel Boyd Receipt number: 0479681 Dated: 9/18/2012 Amount: \$6.00 (Cash)
		BOWERS	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Ethel Boyd Receipt number: 0479681 Dated: 9/18/2012 Amount: \$2.00 (Cash)
9/26/2012	MOTN	HENDRICKSO	Plaintiff Terri Boyd-David Motion for Reconsideration of Memorandum Decision re: Remaining Causes of Action in Plaintiffs' Third Amended Complaint and Objection to 54(b) Certification of Partial Judgment

Date	Code	User	Judge
9/26/2012	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/17/2012 10:00 AM)
9/28/2012		DRIVER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Pandrea, Mary Receipt number: 0480199 Dated: 9/28/2012 Amount: \$10.00 (Cashiers Check)
10/10/2012	RSPN	HENDRICKSO	Defendant Bakers' Response to Plaintiff Boyd-Davis' Motin For Reconsideration and Objection
10/17/2012		KELSO	Miscellaneous Payment: Tape/copy Time Fee Paid by: Pandrea, Mary Receipt number: 0481056 Dated: 10/17/2012 Amount: \$5.00 (Check)
		KELSO	Miscellaneous Payment: Court Tape Fee Paid by: Pandrea, Mary Receipt number: 0481056 Dated: 10/17/2012 Amount: \$1.25 (Check)
		KELSO	Miscellaneous Payment: Court Tape Sales Tax Paid by: Pandrea, Mary Receipt number: 0481056 Dated: 10/17/2012 Amount: \$.08 (Check)
	CMIN	SECK	Court Minutes Hearing type: Motion for Reconsideration; Various Motions Hearing date: 10/17/2012 Time: 9:54 am Courtroom: Court reporter: Amy Wilkins Minutes Clerk: Melissa Seck Tape Number: ct 2 Terry Boyd-Davis Toby McLaughlin
	DCHH	OPPELT	Hearing result for Motion scheduled on 10/17/2012 10:00 AM: District Court Hearing Held Court Reporter: Amy Wilkins Number of Transcript Pages for this hearing estimated: for Reconsideration - More Than 100 Pages
10/18/2012		MORELAND	Miscellaneous Payment: Registered Mail Fee Paid by: Boyd-Davis, Terry Receipt number: 0481119 Dated: 10/18/2012 Amount: \$.87 (Cash)
		MORELAND	Miscellaneous Payment: Tape/copy Time Fee Paid by: Boyd-Davis, Terry Receipt number: 0481119 Dated: 10/18/2012 Amount: \$5.00 (Cash)
		MORELAND	Miscellaneous Payment: Court Tape Fee Paid by: Boyd-Davis, Terry Receipt number: 0481119 Dated: 10/18/2012 Amount: \$1.25 (Cash)

Date	Code	User	Judge
10/18/2012		MORELAND	Miscellaneous Payment: Court Tape Sales Tax Paid by: Boyd-Davis, Terry Receipt number: 0481119 Dated: 10/18/2012 Amount: \$.08 (Cash)
10/25/2012		HENDRICKSO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: McLaughlin Berg Receipt number: 0481433 Dated: 10/25/2012 Amount: \$109.00 (Check) For: Baker, Carol (defendant) and Baker, Timothy (defendant)
	BNDC	HENDRICKSO	Bond Posted - Cash (Receipt 481434 Dated 10/25/2012 for 200.00)
	BNDC	HENDRICKSO	Bond Posted - Cash (Receipt 481436 Dated 10/25/2012 for 100.00)
	APSC	DRIVER	Appealed To The Supreme Court
	NOTA	DRIVER	NOTICE OF APPEAL
10/26/2012	CCOA	DRIVER	Clerk's Certificate Of Appeal - original mailed to ISC; copy to file
10/29/2012	MISC	DRIVER	Corrections to CCOA
	CCOA	DRIVER	Corrected Clerk's Certificate Of Appeal - original mailed to ISC; copy to file
	LETT	DRIVER	Copy of letter from plaintiff
10/30/2012	ORDR	DRIVER	Order Remanding to District Court - for final judgment; appeal suspended
11/1/2012	LETT	OPPELT	Letter to Nellie Gilbertson from District Court
11/5/2012	ORDR	DRIVER	Amended Order Remanding to District Court
11/13/2012	NOTC	DRIVER	Notice RE Correct Address for Plaintiffs for Service of Documents by Court and All Parties
11/29/2012	MISC	DRIVER	Supplemental Decision re: Remaining Liability Causes of action in Plaintiffs' Third Amended Complaint and Order re: Plaintiffs' Motion for Reconsideration of Rule 54(b) Certificate
	MISC	DRIVER	Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman
12/12/2012		KRAMES	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Pandrea Receipt number: 0483375 Dated: 12/12/2012 Amount: \$2.00 (Cash)
12/14/2012	SCDF	HUMRICH	Supreme Court Document Filed- "Notice of Appeal Filed" Clerk's Record and Transcripts due 2/19/2013
1/8/2013	NOTC	HUMRICH	Notice of Transcript Lodged by Debra Burnhan.
1/9/2013	NOTC	HUMRICH	Notice of Transcript Lodged by Debra Burnham for Motion For Reconsideration and Clarification on 7/6/2011
	MISC	HUMRICH	Invoice from CDA Reporting Court Reporters for transcripts \$117.00



Date	Code	User	Judge
1/9/2013	TRAN	HUMRICH	Transcript Filed - Motion for Reconsideration and Clarification on 7/6/2011.
		HUMRICH	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Boyd-Davis, Terry (plaintiff) Receipt number: 0484400 Dated: 1/9/2013 Amount: \$109.00 (Combination) For: Boyd-Davis, Terry (plaintiff)
		HUMRICH	Filing: Technology Cost - CC Paid by: Boyd-Davis, Terry (plaintiff) Receipt number: 0484400 Dated: 1/9/2013 Amount: \$3.00 (Combination) For: Boyd-Davis, Terry (plaintiff)
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 484401 Dated 1/9/2013 for 200.00)
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 484402 Dated 1/9/2013 for 100.00)
	NOTC	HUMRICH	Notice of Cross Appeal
	CINF	HUMRICH	Certified copies of Notice of Cross Appeal and Partial Judgment Quieting Title in Disputed Parcel of Real Property to Plaintiffs Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman mailed to ISC.
	NOTC	HUMRICH	Amended Notice of Appeal
	CINF	HUMRICH	Certified copy of Amended Notice of Appeal mailed to ISC.
1/14/2013	BNDV	HUMRICH	Bond Converted (Transaction number 314598 dated 1/14/2013 amount 117.00)
	SCDF	HUMRICH	Supreme Court Document Filed- Amended Notice of Appeal; Due Date(s) Reset. Clerk's Records and transcripts due to attorneys 03/21/2013; due to ISC 4/22/2013.
1/15/2013	ORDR	HUMRICH	Order Re: Amended Notice of Cross Appeal
1/25/2013	NOTC	HUMRICH	Amended Notice of Cross Appeal
2/5/2013	SCDF	HUMRICH	Supreme Court Document Filed- Amended Notice of Cross Appeal; additional transcript shall be lodged - Trial Decision 4/28/2011
2/13/2013	MOTN	HUMRICH	Court Reporter's Motion for Extension of Time
2/20/2013	BONT	HUMRICH	Bond Posted for Transcript (Receipt 486215 Dated 2/20/2013 for 4100.00)
2/21/2013	ORDR	HUMRICH	Order Granting Court Reporter's Motion For Extension Of Time - filed by Valerie Larson; transcripts now due 4/15/2013

2011 MAR 21 P 1:44

MARIE SCOTT  
CLERK DISTRICT COURT  
*MS*  
DEPUTY

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
Email: [terriboyddavis@me.com](mailto:terriboyddavis@me.com)  
*Plaintiff In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS, et al.;	)	Case No: CV2010-0703
	)	
Plaintiffs,	)	<b>AFFIDAVIT OF TERRI BOYD-DAVIS IN</b>
	)	<b>SUPPORT OF PLAINTIFF TERRI</b>
v.	)	<b>BOYD-DAVIS' MOTION IN LIMINE RE</b>
	)	<b>EXCLUSION OF TESTIMONY OF</b>
MARY PANDREA, et al.;	)	<b>DEFENDANTS' DESIGNATED EXPERT</b>
	)	<b>WITNESSES</b>
Defendants.	)	
	)	

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

I, Terri Boyd-Davis, swear under oath that:

1. I am one of the Plaintiffs in this action. I am over the age of 18, have personal knowledge of the facts contained herein, and am competent to testify to these facts.
2. Defendants served Defendants' Expert Witness Disclosure upon me on January 26, 2011. The disclosure was incomplete and did not contain the information required by this Court's Pretrial Order or as required by I.R.C.P. 26(b)(4)(A)(i). The only expert for which a report was provided with this disclosure was David Evans. The disclosure was confusing to me because throughout the document it referred to defendants as "plaintiffs." A true and correct copy of the disclosure is attached hereto as Exhibit "1."
3. On March 1, 2011, defendants served their First Amended Defendants' Expert Witness Disclosure upon me. This disclosure provided for the first time a report by another expert, Tim Kastning. The report was 103 pages long.

4. Defendants claim that Mary Pandrea ("Pandrea") and Nellie Gilbertson ("Gilbertson") are "experts" who will be testifying "as to the extent of timber damage" and to "the value of the alleged timber value." Defendants claim the qualifications of these "experts" is that they are "certified master gardener[s] and have many years of experience in horticulture."

5. I searched the internet for information concerning Pandrea's and Gilbertson's claimed "master gardener" status and discovered that they "graduated" from the Bonner County Master Gardener ("BCMG") program on October 15, 2010. A true and correct copy of a page from the BCMG newsletter evidencing this information that I downloaded off the internet is attached hereto as Exhibit "2."

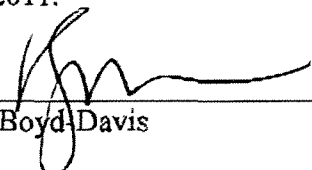
6. From my internet research, I discovered that the BCMG Association is a "voluntary organization made up of people who desire not only to further their own knowledge of home horticulture, but to share that knowledge with others." A true and correct copy of a page from the BCMG By-Laws evidencing this information that I downloaded off the internet is attached hereto as Exhibit "3."

7. From my internet research, I discovered that the purpose of the Idaho Master Gardener Program is to "extend horticultural education . . . in areas related to home horticulture." A true and correct copy of the Volunteer Position Description evidencing this information that I downloaded off the internet is attached hereto as Exhibit "4."


8. Pandrea and Gilbertson were involved in the destructive activities to the property at issue in this case for which plaintiffs filed this lawsuit in April 2010. I have many photographs of them on the property engaged in these activities. They were named defendants that have now been dismissed from this case.

9. Pandrea's and Gilbertson's "credentials" do not indicate that they are experts qualified to testify to timber damage in this case.

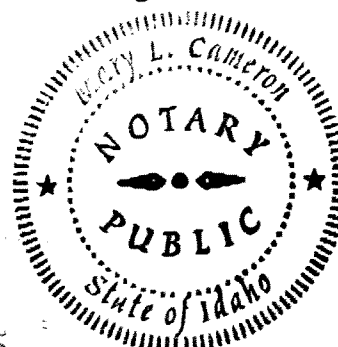
10. DATED this 21<sup>st</sup> day of March, 2011.

  
Terri Boyd-Davis

Subscribed and Sworn to me  
this 21<sup>st</sup> day of March, 2011

  
NOTARY PUBLIC FOR Idaho  
Residing at: Bayview Dr  
My Commission Expires: 8/29/2011

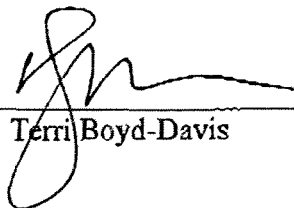
Affidavit of Terri Boyd-Davis



# CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **AFFIDAVIT OF TERRI BOYD-DAVIS IN SUPPORT OF PLAINTIFF TERRI BOYD-DAVIS' MOTION IN LIMINE RE EXCLUSION OF TESTIMONY OF DEFENDANTS' DESIGNATED EXPERT WITNESSES** was served on the following in the manner indicated on this 21<sup>st</sup> day of March, 2011.

D. Toby McLaughlin Berg & McLaughlin, Chdt. 414 Church Street, Ste 203 Sandpoint, ID 83864 Phone: 208-263-4748 Fax: 208-263-7557 <i>Attorney for Defendants Timothy and Carol Baker; Nellie and James Gilbertson</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-263-7557
Jean Coleman 2901 N. Fifth St. Coeur d'Alene, ID 83814	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-263-7557
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-263-7557
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Defendant</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
\_\_\_\_\_  
Terri Boyd-Davis

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Gilbertson and Baker*

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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN, an individual,  
NO. CV 2010-00703

Plaintiffs,

vs.

DEFENDANTS' EXPERT WITNESS  
DISCLOSURE

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

Plaintiffs hereby give notice that they intend to call the following expert witnesses at trial,  
and make the following disclosures pursuant to IRCP 26(b)(4)(A)(i):

1. Dan Hunt from Alliance Title

- a. Statement of expert opinions: Mr. Hunt will testify regarding the chain of  
title for the parcels of real estate at issue in this case. According to the  
public records, the Bakers are the titled owner of the Disputed Property.  
Mr. Hunt will also testify that there is no deeded easement across the road  
leading into the Coleman Property.

Exhibit "1" - p. 1

1 b. Information considered by the witness. Mr. Hunt considered deeds,  
2 surveys and easements of record with the Bonner County recorder's  
3 office.

4 none  
5 attached

6 c. Exhibits. See documents attached to the Plaintiffs Exhibit List and  
7 Amended Exhibit List.

8 d. Qualification. Mr. Hunt is a title and escrow officer for Alliance title. Mr.  
9 Hunt has been a title officer for almost nine years. He has received a  
10 variety of training in this regard.

11 e. Compensation. Mr. Hunt is to receive compensation at the customer expert  
12 witness fee set by his company, Alliance Title, which is believed to be \$75  
13 per hour.

14 2. David Evans, Glahe & Associates

15 a. Statement of expert opinions: Mr. Evans will testify regarding the  
16 surveyed boundaries of subject property at issue in the case. A summary  
17 of Mr. Evans opinion is attached hereto as *Exhibit A*.

18 b. Information considered by the witness. Mr. Evans considered surveys of  
19 the subject property that are on record with Bonner County, the deeds at  
20 issue, the records of Glahe & Associates (previously produced in response  
21 to subpoena), as well as the records of Tucker Brown & Vermeer  
22 Engineering & Surveying (previously produced to the Plaintiffs). Mr.  
23 Evans also talked to the members of the field crew that performed the  
24 survey for the Bakers.

25 none  
of  
these  
attached

c. Exhibits. See documents identified and attached to the Plaintiffs Exhibit  
List and Amended Exhibit List, as well as the documents identified in the  
subsection b.

d. Qualification. Mr. Evans has been a licensed surveyor for more than a  
decade. He is currently licensed in Idaho. He has nearly twenty years

Ex "1" - p. 2

1 experience in boundary, construction, topographic, right of way, and  
2 cadastral surveying. See also Exhibit A hereto.

- 3 e. Compensation. Mr. Evans is to receive compensation at the customer  
4 expert witness fee set by his company, Glahe & Associates, which is  
5 believed to be \$68 per hour.

6 3. Tim Kastning, Grace Tree Service

- 7 a. Statement of expert opinions: Mr. Kastning will testify as to the value of  
8 the alleged timber damage and in rebuttal to the estimate by Peregrine  
9 Tree Service.

- 10 b. Information considered by witness: Mr. Kastning has reviewed the report  
11 by Peregrine Tree Service, visited the site and spoken with Plaintiffs along  
12 with Mary Pandrea.

- 13 c. Exhibits:

- 14 d. Qualifications: Mr. Kastning is a certified arborist and has over a decade  
15 of experience evaluating and estimating timber.

- 16 e. Compensation: Mr. Kastning is receiving compensation at the rate of  
17 \$50.00 per hour.

18 4. Mary Pandrea, Certified Master Gardener

- 19 a. Statement of expert opinions: Ms Pandrea will testify as to the extent of  
20 the timber damage and the aesthetic value of the vegetation which was  
21 allegedly damaged. It is Ms. Pandrea's opinion that the value of the  
22 alleged timber trespass is negligible.

- 23 b. Information considered by witness: Ms. Pandrea has visited the site and  
24 reviewed the expert report by Peregrine Tree Service.

- 25 c. Exhibits: None.

- d. Qualifications: Ms. Pandrea is a certified master gardener and have many  
years of experience in horticulture.

- e. Compensation: Ms. Pandrea is not receiving any compensation from the  
Plaintiffs.

1  
2  
3 5. Nellie Gilbertson, Certified Master Gardener

- 4 a. Statement of expert opinions: Mrs. Gilbertson will testify as to the extent  
5 of the timber damage and the aesthetic value of the vegetation which was  
6 allegedly damaged. It is Mrs. Gilbertson's opinion that the value of the  
7 alleged timber trespass is negligible.  
8 b. Information considered by witness: Mrs. Gilbertson has visited the site  
9 and reviewed the expert report by Peregrine Tree Service.  
10 c. Exhibits:  
11 d. Qualifications: Mrs. Gilbertson is a certified master gardener and has  
12 many years experience in horticulture.  
13 e. Compensation: Mrs. Gilbertson is not receiving any compensation from  
14 the Plaintiffs.

15 6. Plaintiffs reserve the right to name additional expert witnesses upon receiving  
16 Defendants' disclosure of expert witnesses.

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DATED this 26<sup>th</sup> day of January, 2011.

BERG & McLAUGHLIN, Attorneys at Law

By: 

TOBY McLAUGHLIN  
Attorneys for Plaintiffs

(Defendants'  
Attorney)



## Graduation Ceremony & Annual Award Celebration was a Wonderful Success!

Good times, good food, good friends! The Graduation Ceremony and Annual Award Celebration were held on Friday, October 15<sup>th</sup>. It was held at the usual location but the food and overall ambience exceeded all expectations.

We have 18 new Certified Master Gardeners graduating in the class of 2010. Mike Bauer, Extension Educator, presented them with their certificates and their U of I Bonner County Master Gardener name badges. We welcome them to the program and look forward to their participation for many years to come. Their energy and enthusiasm is contagious and stands to only continue the growth of the program. In this past year they have already contributed as evidenced by speaking at local groups, writing articles for the newsletter, providing guidance at the monthly Membership Meeting, providing support at our many volunteer projects and taking on the responsibility of scheduling the Home Horticulture classes.

Please join me in welcoming the graduating class of 2010 to the program:



Jon Bair, Jenna Bertus, Janis Clark, Nellie Gilbertson, Linda Gjording, Penny Goodman, Jan Hansen, Kathleen Huntley, Elizabeth Maxwell, Stan Miller, Toni North, Mary Pandrea, Kim Peterson, Jon Porter, Lynn Savonen, Lynda Schlfrn, Jan Wilfert and Lynn Wilson

We also took some time to review the exceptional projects we supported in 2010 and to recognize the efforts of those individuals who chaired them with a token of our appreciation:

**Home and Garden Show** – We started off the year at this event by providing an Information booth at which we answer basic gardening questions and inform the public about the program. In addition, throughout the 2-day event we provide numerous short educational programs. This was lead by Brenda Fletcher.

**Mickinnick Trail** – This has been one of our sponsored beautification projects for the community. The work effort consists of maintaining a major local trail head and using it as an example of the use of native plant materials. Direction is provided by Jan Griffiths.



**Home Horticulture Series** – This is a semi-annual event where we offer a series of educational courses to the public. They have always been well received by the community. The committee works hard to identify topics, find speakers, manage registration and manage the venue on the night of each class. It is also our largest fund raiser annually. Our co-chairs for the HH series are Don Childress, Janae Dale and Gail Swan.

**Plant Clinic** – This is the cornerstone of our volunteer efforts; to assist the general public with gardening questions. It is the bases for the creation of the program and it commands the most volunteer hours. Monitoring is provided by our Plant Clinic Coordinator, Martha Fortunati.

**Learning Garden** – This effort began some years back with the idea of providing a venue at which the community could observe and learn from actual growing practices. The Learning Garden continues to evolve from year to year as new growing practices are explored. An additional benefit to the Learning Garden is that the harvest is donated to the food bank. The Learning Garden has grown under the guidance of Mikey Haven and Gail Swan.

Erhrbit "2"

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**BONNER COUNTY MASTER GARDENER ASSOCIATION, INC.**

**By-Laws  
2007**

Introduction

The Bonner County Master Gardener Association, Inc. is a voluntary organization made up of people who desire not only to further their own knowledge of home horticulture, but to share that knowledge with others.

This document is divided into two sections. The By-Laws of the organization make up the first section. These articles are meant to be a general description of the Bonner County Master Gardeners Association, Inc., whereas section two is the more specific Procedures and Guidelines. The second section is meant to be a working document that provides the guidelines we have written for the governance of our organization. They are subject to review and change by the Master Gardener Membership and the University of Idaho Bonner County Extension program coordinator.

Article One -- Name

The name of this organization shall be the University of Idaho "Bonner County Master Gardeners Association, Inc." (BCMGA). It shall be located at the University of Idaho Bonner County Extension Office, 4205 North Boyer, Sandpoint, Idaho 83864.

Article Two -- Non-Profit

The Bonner County Master Gardeners Association is and shall be a "non-profit organization."

Said association is organized exclusively for charitable and educational purposes and shall qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provision of any future United States Internal Revenue Law).

No substantial part of the activities of the association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the BCMGA shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign, on behalf of any candidate for public office. There is nothing in these by-laws, policies and procedures, written or implied, which is in conflict with the University of Idaho Extension System or the laws of the State of Idaho or the laws of the United States of America.

Article Three -- Mission Statement

The BCMGA is formed with the purpose of supporting the Master Gardener Program in conjunction with the University of Idaho.

The BCMGA operates under the established guidelines of the University of Idaho Bonner County Extension Office and is answerable to the University of Idaho Extension program coordinator.

The BCMGA will help the University of Idaho Bonner County Extension program coordinator establish guidelines for training and defining volunteer activities.

# University of Idaho Extension

## Idaho Master Gardener Program

### AUTHORIZED VOLUNTEER POSITION DESCRIPTION

#### Purpose of the Idaho Master Gardener Program

To extend horticultural education through trained and certified volunteers.

#### Brief description of Master Gardener volunteer responsibilities

Volunteers are to provide education and assistance to Idaho residents in topic areas related to home horticulture. Activities may include, but are not limited to, answering questions in person and over the telephone about vegetable gardening, fruit trees, ornamentals, lawns, insects, and other related topics; assisting with public horticulture projects; assisting in the preparation of home horticulture classes; and organizing special seminars and conferences for homeowners and other Master Gardeners.

#### Requirements for volunteer service

- Have an interest and/or knowledge or skills in basic gardening, ornamental horticulture, or general plant-related topics.
- Be able to communicate effectively with the public.
- Participate in beginning Master Gardener classroom training (a minimum of 30 hours).
- Read and agree to the terms of the Idaho Master Gardener Program authorized volunteer position description and complete and sign the opportunity contract.
- Complete or be enrolled in additional hands-on practicum training and volunteer service (a minimum of 30 hours) under the direction of a University of Idaho Extension extension educator.
- Be responsible to the extension educator in charge of the Master Gardener program. All outside project work must be approved first with the educator in charge to receive Master Gardener credit.
- Adhere to University of Idaho horticulture recommendations and cooperate with the county extension staff.
- Meet all statewide and local county requirements for certification.
- Follow University of Idaho Extension affirmative action and equal opportunity policies by not allowing discrimination on the basis of race, gender, color, age, religion, national origin, sexual orientation, or disability.
- If required to operate a UI vehicle as part of volunteer duties, be trained as a certified UI driver.

#### Supervision of volunteers

- The University of Idaho extension educator in charge of the Master Gardener program provides supervision and educational support to the volunteer Master Gardener.
- The extension educator will assign, review, and assess hands-on practicum work for the Master Gardener trainee, Master Gardener, or Advanced Master Gardener volunteer.
- The extension educator will provide in-service training and furnish space and other needed support materials when the Master Gardener volunteer works in the extension office.

Signed: Master Gardener Volunteer

Date

Signed: County Master Gardener Supervisor

Date

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Gilbertson and Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAR 21 P 4: 53

MARIE SCOTT  
CLERK DISTRICT COURT

*ap*  
DEPUTY

8 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

10 TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
11 husband and wife; and JEAN L. COLEMAN, an individual, **NO. CV 2010-00703**

12 Plaintiffs,

13 vs.

TRIAL BRIEF

14 MARY PANDREA, an individual; TIMOTHY  
15 BAKER and CAROL BAKER, husband and  
16 wife; JAMES GILBERTSON and NELLIE  
17 GILBERTSON, husband and wife; JOHN  
18 PANDREA, an individual; and DOES 1-50,  
19 inclusive,

20 Defendants.

21 **I. NATURE OF CASE AND SUMMARY OF ARGUMENT**

22 This case involves a boundary line dispute in Bonner County Idaho. The Plaintiffs  
23 claims against Defendant Mary Pandrea and Defendants James and Nellie Gilbertson have been  
24 dismissed.

25 The Plaintiffs are alleging ownership of a triangular half acre portion of Defendant  
Bakers' northernmost parcel of real property (hereinafter "the Disputed Property") on various  
theories, including quiet title, adverse possession, boundary by acquiescence, prescriptive  
easement, easement by implication, and easement by necessity. The Plaintiffs have also

1 asserted claims of trespass and timber trespass, which are conditioned upon the Plaintiffs  
2 prevailing on their claim of ownership of the underlying disputed property.

3 The Plaintiffs claims fail in their entirety. The Defendants Tim and Carol Baker are the  
4 fee owners of the disputed property, as evidenced by three recorded surveys, all of which are  
5 endorsed by licensed surveyors. The Plaintiffs have no competent evidence supporting their  
6 claim of ownership to the Disputed Property.

7 The Plaintiffs' claim for adverse possession fails because: (a) the Disputed Property is not  
8 substantially enclosed; (b) the Disputed Property has not been usually cultivated or improved; (c)  
9 the Bakers and their predecessor's in interest have always paid the real property taxes on the  
10 Disputed Property; (d) the Plaintiffs use of the Disputed Property has been with the implied  
11 permission of the owner of said property, and therefore lacks hostility.

12 Similarly, the Plaintiffs cannot offer adequate proof to support their claim for boundary by  
13 acquiescence. Evidence at trial will demonstrate that the fence at issue was never intended to  
14 mark the boundary between the Coleman and Baker properties. Rather, it was built by Clifford  
15 Johnson, the Bakers' predecessor-in-interest, solely for the purpose of keeping his horses  
16 contained. Moreover, Jean Coleman was well aware that the fence did not mark her boundary;  
17 therefore, a boundary by agreement was never formed.

18 The Plaintiffs easement by prescription claim fails because the Plaintiffs use of the  
19 driveway has always been permissive, and the Plaintiffs do not have an easement by necessity or  
20 implication because there is insufficient evidence to support the respective claims.

21 Finally, there is no trespass claim for the obvious reason that Bakers own the underlying  
22 property, upon which the alleged trespass took place. Even if the Court were to find otherwise,  
23 there is insufficient proof of damages for an award to be made.  
24  
25

1 The Defendants Baker respectfully ask the Court to quiet title to the Disputed Property in  
2 their favor.

## 3 II. LEGAL POSITION

### 4 A. The Bakers Own Fee Simple Title to the Disputed Property and Are Entitled to a 5 Decree Quietening Title to the Bakers.

6 Evidence at trial will demonstrate that Defendants' Tim and Carol Baker are the fee  
7 simple owners of the property in dispute in this action. In 2007, the Bakers hired Glahe &  
8 Associates to perform a survey of their property, as described in the deed to their land. As will  
9 be attested to by surveyor David Evans of Glahe & Associates, the Bakers deed encompasses the  
10 Disputed Property.

11 The Plaintiffs, nevertheless, assert that they own a portion of the Baker's Property. Yet,  
12 the Bakers do not present a survey of their own. Rather, they intend to present the testimony of  
13 surveyor Robert Stratton, who asserts, based upon a convoluted interpretation of the deeds, that  
14 the legal description to Jean Coleman's property must be ignored so that the Plaintiff's property  
15 lines are shifted to the south and turned more than 23 degrees counterclockwise, thereby giving  
16 her ownership of the property in question. Not only is such testimony unsupported by either  
17 logic or any actual recorded survey, but it is directly contradicted by the three surveys which are  
18 actually of record.

19 Mr. Stratton's testimony will prove to be unpersuasive. On the contrary, David Evans, the  
20 licensed surveyor who performed the recorded survey for the Bakers in 2007, will testify that the  
21 boundaries of the Bakers' property, as set forth in their deed, include the Disputed Property.  
22 Because the Bakers hold record title to Disputed Property, Idaho law presumes that they are the  
23 legal owners. *Luce v. Marble*, 142 Idaho 264, 271, 127 P.3d 167 (2005). The Plaintiffs may  
24 overcome this presumption only by establishing a claimed right to Disputed Property through  
25 clear and convincing evidence. *Id.* ("[O]ne who would claim the ownership of property of which  
the legal title stands or record in another ... must establish such claim by evidence that is clear,  
satisfactory and convincing." quoting *Russ Ballard & Family Achievement Inst.*, 97 Idaho at 579,  
548 P.2d at 79). They cannot do so.

1 **B. The Plaintiffs Cannot Prove the Existence of a Boundary by Acquiescence or**  
2 **Agreement.**

3 The Plaintiffs assert a claim for boundary by agreement or acquiescence against the  
4 Bakers in their spirited attempt to acquire title to the Disputed Property. Boundary by agreement  
5 or acquiescence has two elements: (1) there must be an uncertain or disputed boundary and (2) a  
6 subsequent agreement fixing the boundary. *Luce*, 142 Idaho at 271; citing *Cox v. Clanton*, 137  
7 Idaho 492, 494-95, 50 P.3d 987, 989-90 (2002). "Idaho case law demonstrates that an agreement,  
8 either express or implied, must exist to establish a boundary by agreement or acquiescence." *Cox*  
9 *v. Clanton*, 137 Idaho 492, 495, 50 P.3d 987, 990 (2002). "Once a boundary line has been fixed  
10 under the doctrine of agreed boundary, that boundary is binding upon successors in interest *who*  
11 *purchase with notice of the agreement.*" *Duff v. Seubert*, 110 Idaho 865, 870, 719 P.2d 1125,  
12 1130 (1985) (*emphasis added*) (citing *Paurley v. Harris*, 75 Idaho 112, 268 P.2d 351 (1954)).  
13

14 In the instant case, the Plaintiffs cannot prove by clear and convincing evidence that a  
15 boundary by agreement was formed, or that the Bakers took subject to that agreement when they  
16 purchased their property. Evidence at trial will prove that the fence line in question was initially  
17 constructed by Cliff Johnson sometime after 1971, for the sole purpose of penning the Johnsons'  
18 horses. Johnson never intended to put the fence on his northern boundary; rather, he chose the  
19 location of the fence based entirely on the topography of his property. He simply put the fence  
20 in a location that would allow his horses to access to a pond, and keep them out of a gully to the  
21 West.  
22

23 Moreover, the evidence at trial will show that Jean Coleman knew that the fence did not  
24 mark the boundary line. In fact, she had a survey conducted on her property in 1980, and a legal  
25

1 description drawn up for the Disputed Parcel. Yet, she chose to wait 27 years before filing suit  
2 and making a claim of ownership to that property.

3         Simply because Ms. Coleman used the area beyond the fence for occasional summer  
4 parties is insufficient to imply a boundary by agreement.     “Acquiescence, by itself, does not  
5 constitute a boundary by agreement.” *Downey v. Vavold*, 144 Idaho 592, 595-96, 166 P.3d 382,  
6 385-86 (2007). As the Idaho Supreme Court explained in *Wells v. Williamson*, 118 Idaho 37,  
7 794 P.2d 626 (1990), “boundary by acquiescence” is simply another name attached to the  
8 doctrine of boundary by agreement; it is not a separate legal theory. “[T]here must be an  
9 uncertain or disputed boundary and a subsequent agreement fixing the boundary.” *Id.* at 41, 794  
10 P.2d at 630. The agreement can be express or implied. “In situations where no express agreement  
11 has been made, our cases have viewed a long period of acquiescence by one party to another  
12 party's use of the disputed property merely as a factual basis from which an agreement can be  
13 inferred.” *Id.*

15         In the instant case, it is not reasonable to infer that such an agreement existed. First, the  
16 shape of the fence itself does not lend itself to a finding that the fence was intended to mark the  
17 boundary between what was at the time the Coleman property and the Johnson Property. The  
18 fence extends well to the West of the Coleman's boundary, then turns sharply Southwest, then  
19 turns again Southeast. There is no boundary line anywhere near that fence.

21         Moreover, Mr. Johnson will testify that the original wooden fence that he constructed no  
22 longer exists. It fell into a state of disrepair over the years, and was subsequently replaced by a  
23 barbed wire fence. However, the barbed wire fence was not placed in exactly the same location  
24 as the original fence, lending some doubt as to where the original fence was located.  
25



1 More importantly, Mr. Johnson has indicated that he built the fence, and never intended  
2 that it mark the boundary line. He will further testify that there was no agreement between the  
3 Johnsons and Ms. Coleman, either express or implied, that the fence was the boundary between  
4 their two properties. Rather, he allowed the family of his close friends to utilize the property  
5 surrounding her cabin. Nothing in such use indicates that Ms. Coleman and the Johnsons had  
6 agreed that the fence line would act as the property line.

7 The case of *Luce v. Marble*, 142 Idaho 264, 271-72, 127 P.3d 167, 174-75 (2005) is  
8 instructive on this issue. In *Luce*, the Idaho Supreme Court explained the doctrine of boundary  
9 by acquiescence as the application of two presumptions.

10 For nearly a century it has been the law of this state that evidence  
11 of a long established fence creates two presumptions. First, when a  
12 fence line has been erected, and then coterminous landowners have  
13 treated that fence line as fixing the boundary between their  
14 properties "for such a length of time that neither ought to be  
15 allowed to deny the correctness of its location" the law presumes  
16 an agreement fixing that fence line as the boundary. (*Internal*  
17 *citations omitted*).

18 Second, coupled with the long existence and recognition of a fence  
19 as a boundary, "*the want of any evidence as to the manner or*  
20 *circumstances of its original location*, the law presumes that it  
21 was originally located as a boundary by agreement because of  
22 uncertainty or dispute as to the true line." *Beneficial Life Ins. Co.*,  
23 75 Idaho at 241, 270 P.2d at 835.

24 Here, the specific facts of the case prevent this presumption from  
25 operating in Luce's favor. *The doctrine of boundary by agreement*  
*or acquiescence is based on a reasonable assumption implied*  
*from the surrounding circumstances. See Griffel*, 136 Idaho at  
400, 34 P.3d at 1083. In our prior cases, we have applied the  
presumption when it was reasonable to assume from the facts on  
the ground that at some prior point landowners agreed or  
acquiesced to a certain location as the boundary between their  
properties. However, *the shape of Parcel A is so irregular and*  
*encompasses such a large portion of the Marble property that*  
*such an assumption would be unreasonable. Therefore, since*  
*Luce cannot rely on this presumption and failed to present any*

1 *evidence the fence lines surrounding Parcel A settled an actual*  
2 *disagreement or uncertainty, she cannot establish her right to*  
3 *Parcel A through boundary by agreement or acquiescence.*

4 *Luce v. Marble*, 142 Idaho 264, 271-72, 127 P.3d 167, 174-75 (2005) (emphasis added).

5 Because we know from Mr. Johnson's testimony the circumstances of the creation of the  
6 fence, no presumption arises that would support the finding of a boundary by agreement. The  
7 fence was erected for the sole purpose of penning horses, and treated as such. *Downey*, 144  
8 Idaho at 595 ("The mere act of erecting the fence inside his boundary line did not constitute an  
9 abandonment of his land lying outside the fence, nor did it constitute an agreement that the  
10 adjoining landowners can have that land.") Once the Johnson's horses died, he discontinued any  
11 further efforts at maintaining the fence.

12 Moreover, Mr. Johnson knew his property extended North beyond the fence, and never  
13 intended the fence to mark the boundary line. In fact, the evidence demonstrates that Ms.  
14 Coleman knew the location of her actual boundary line from a survey that she had conducted in  
15 1981, which clearly shows the location of her boundary line. This evidence rebuts any  
16 presumption that could arise that would support a finding that the parties had reached an  
17 agreement that the fence was the boundary between the parcels.

18 From these circumstances, it not reasonable to conclude that the parties had agreed that  
19 the fence would mark the boundary between their properties.

20 **C. The Bakers are Not Bound by any Boundary Agreement, as They are Buyers in**  
21 **Good Faith.**

22 Even if Court were to find that Ms. Coleman and Ms. Johnson agreed that the fence  
23 would mark the boundary between their properties, that agreement would not be binding upon  
24 the Bakers. "Once a boundary line has been fixed under the doctrine of agreed boundary, that  
25 boundary is binding upon successors in interest *who purchase with notice of the agreement.*"  
*Duff v. Seubert*, 110 Idaho 865, 870, 719 P.2d 1125, 1130 (1985) (emphasis added) (citing  
*Paurley v. Harris*, 75 Idaho 112, 268 P.2d 351 (1954)).

1 Evidence at trial will prove that Bakers were buyers in good faith who acquired their  
2 property without notice, either actual or constructive, of the alleged boundary line agreement.  
3 The Bakers will testify that they never saw the fence prior to purchasing the property. Moreover,  
4 the alleged fence line was in such a state of disrepair in 2007, and was so overgrown with weeds  
5 and other vegetation, that the fence was not readily observable to a prudent purchasing  
6 conducting a visible inspection. As such, the agreement, even if it were found to have been  
7 formed, is not binding against the Bakers.

8  
9 **D. The Plaintiffs Claim of Adverse Possession Upon an Oral Claim of Right Fails for  
Lack of Proof of the Essential Elements of the Claim.**

10 Because the Plaintiffs are not the record owners of the Disputed Property, they must  
11 establish by clear and convincing evidence that they have acquired title through adverse  
12 possession or boundary by acquiescence. The Plaintiffs claim for adverse possession fails  
13 because the Plaintiffs cannot offer proof sufficient to establish the essential elements of the  
14 claim.  
15

16 To prevail upon an oral claim for adverse possession, a party must satisfy the  
17 requirements of Idaho Code § 5-210, which states:

18 For the purpose of constituting an adverse possession, by a person  
19 claiming title not founded upon a written instrument, judgment or  
20 decree, land is deemed to have been possessed and occupied in the  
21 following cases only:

22 (1) Where it has been protected by a substantial enclosure.

23 (2) Where it has been usually cultivated or improved.

24 Provided, however, that in no case shall adverse possession be  
25 considered established under the provisions of any sections of this  
code unless it shall be shown that the land has been occupied and  
claimed for the period of twenty (20) years continuously, and the  
party or persons, their predecessors and grantors, have paid all the  
taxes, state, county or municipal, which have been levied and

1 assessed upon such land according to law. Provided further, that  
2 adverse possession shall not be considered established under the  
3 provisions of any sections of this code if a written instrument has  
4 been recorded in the real estate records kept by the county recorder  
5 of the county in which the property is located and such written  
6 instrument declares that it was not the intent of a party to such  
7 instrument, by permitting possession or occupation of real  
8 property, to thereby define property boundaries or ownership.  
9 Provided further, that for purposes of establishing adverse  
10 possession pursuant to this section, a person claiming adverse  
11 possession must present clear and convincing evidence that the  
12 requirements of subsection (1) or (2) of this section have been met.

13 (Emphasis added).

14 “In addition to the requirements of I.C. § 5-210, [the claimant must prove] that the  
15 possession has been actual, open, visible, notorious, continuous and hostile to the party against  
16 whom the claim is made.” *Luce v. Marble*, 142 Idaho 264, 272, 127 P.3d 167 (2005). The party  
17 claiming adverse possession must prove all of the essential elements of adverse possession by  
18 clear and satisfactory evidence. *Id.*

19 **1. The Plaintiffs Alleged Use of the Disputed Property was Permissive and**  
20 **Intermittent.**

21 To prove their claim for adverse possession, the Plaintiffs must prove by clear and  
22 convincing evidence that their use of the Disputed Property was actual, open, visible, notorious,  
23 continuous and hostile to the party against whom the claim is made. *Id.* The evidence at trial will  
24 demonstrate that the Plaintiffs use of the Disputed Property was permissive, and that it was so  
25 intermittent as to lack sufficient continuity. Therefore, the Plaintiffs cannot satisfy the  
requirements of a claim for adverse possession.

The Idaho Supreme Court has ruled that an “occupation without hostile intent does not  
constitute adverse possession.” *Berg v. Fairman*, 107 Idaho 441, 443, 690 P.2d 896, 898 (1984),  
citing *Hamilton v. Village of McCall*, 90 Idaho 253, 285, 409 P.2d 393, 396 (Idaho 1965). It is

1 thus the “burden of claimant to show possession of disputed property was hostile to that of the  
2 real owner and not with the permission of the real owner.” *Id.*

3 According to Ms. Coleman, her possession of the Disputed Property began in 1970 when  
4 she acquired the property as a gift from her father, Harry Clark. (*Coleman Aff.*, ¶¶ 2-6). From  
5 1970 until Mr. Clark conveyed the Disputed Property to the Johnsons, the Disputed Property  
6 was, therefore, owned by Ms. Coleman’s parents. (*Id.*). Thus, according to her own testimony,  
7 when Ms. Coleman first occupied the Disputed Property, it was owned by her relatives.

8 According to the Idaho Supreme Court, “[w]hen one occupies the land of a blood  
9 relative, such occupation is presumptively with the permission of the true owner.” *Berg*, 107  
10 Idaho at 443, citing *Tremayne v. Taylor*, 101 Idaho 792, 621 P.2d 408 (1980). Moreover,

11 If the initial entry of the adverse claimant upon the disputed land  
12 was with the permission of the record owner, “the statute of  
13 limitation will not begin to run against the true owner until the  
14 adverse claimant establishes exclusive right in himself,” and ***once***  
15 ***it has been established that an adverse claimant's initial entry***  
16 ***upon disputed land was with the permission of the record owner,***  
***“only an unequivocal act by the permissive user brought home to***  
***the true owner will start the running of the statute of***  
***limitations.”***

17 *Berg*, 107 Idaho at 443, citing *Gameson v. Remer*, 96 Idaho 789, 537 P.2d 631 (1975) (emphasis  
18 added).

19 Ms. Coleman’s alleged entry and possession of the disputed parcel was initially onto land  
20 that was owned by a blood relative; therefore that occupation is presumed to be with permission  
21 of the owners, and thus is not hostile. Such permissive use continued after the property was sold  
22 to the Johnsons, whom Ms. Coleman describes as long time family friends. In fact, the Plaintiffs  
23 fail to identify a single act which evidences hostility between the neighbors until 2008, at which  
24 time the Bakers had acquired the Johnsons’ property. Consequently, the record is devoid of any  
25

1 evidence of an unequivocal act by Ms. Coleman which would have brought home to the true  
2 owner a hostile claim of occupation.

3 Additionally, evidence at trial will demonstrate that the Plaintiffs use of the Disputed  
4 Property was intermittent, at best. They did not use the property in the winter, and would only  
5 occasionally use the property for weekend visits in the other months.

6 Without evidence proving that the Plaintiffs' occupation of the Disputed Property was  
7 hostile and continuous, their claim for adverse possession fails.

8 **2. The Plaintiffs have Failed to Set Forth Evidence Demonstrating that the**  
9 **Disputed Property has Been Substantially Enclosed for the Statutory Period.**

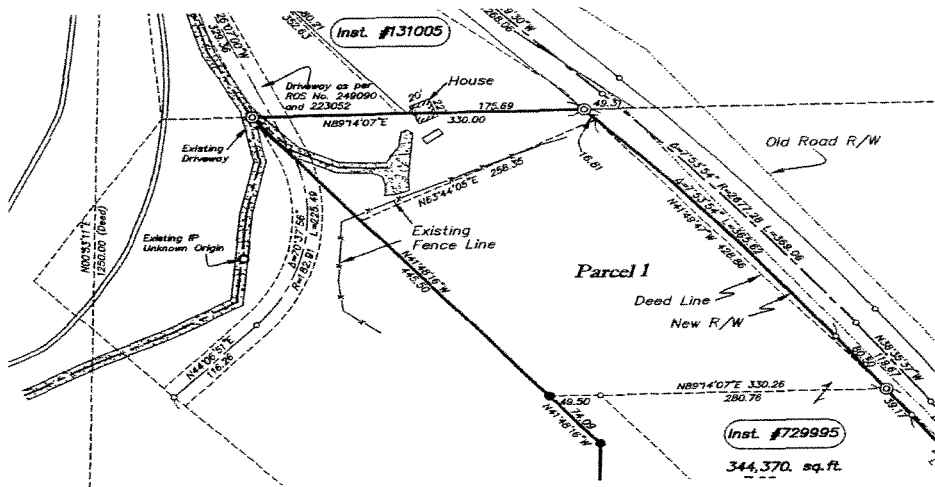
10 As set forth in Idaho Code § 5-210, the Plaintiffs must prove that the Disputed Property  
11 has been "substantially enclosed" for the 20 year statutory period. They cannot do so.

12 In explaining the substantial enclosure requirement, the Idaho Supreme Court has said:

13 I.C. § 5-210(1) requires "that land claimed by adverse possession  
14 be 'protected by a substantial inclosure.' " It is true that the  
15 character of the inclosure may vary somewhat from case to case  
16 "so long as it satisfies what is usual under the circumstances and  
17 *indicates clearly the boundaries of the adverse occupancy.*"  
Adverse claimants must establish that they constructed or  
maintained an inclosure on the disputed parcel of land *to indicate*  
*the extent of their claim.*

18 *Lindgren v. Martin*, 130 Idaho 854, 857-58, 949 P.2d 1061, 1064-65 (1997) (citations omitted)  
19 (emphasis added).

20 The Disputed Property is a triangle shaped portion of the Baker property positioned just  
21 to the South of the Coleman Property, and is depicted upon a survey provided by Glahe and  
22 Associates, a portion of which is included herein for reference:  
23  
24  
25



The Plaintiffs point to the fence line identified in the survey and claim that they have acquired all of the property North of the fence by adverse possession. Yet, even if the Court assumes for the sake of argument that the fence has been in this location for the statutory period, the Plaintiffs have failed to prove that the Disputed Property is “substantially enclosed” because *the Existing Fence Line runs along only one side of the property*. Neither the West boundary nor the North boundary of the Disputed Property are fenced or otherwise enclosed; thus leaving two of the three sides of the claimed property unenclosed. Consequently, the Plaintiffs have failed to demonstrate that there is any enclosure which “*indicates clearly the boundaries of the adverse occupancy,*” and therefore have failed to show that the Disputed Property is substantially enclosed, as required by I.C. § 5-210.

Additionally, evidence at trial will prove that until 2008, the Plaintiffs never constructed or maintained the alleged fence line. *Lindgren*, 130 at 857-58 (“Adverse claimants must establish that they constructed or maintained an inclosure on the disputed parcel of land to indicate the extent of their claim.”) Rather, Cliff Johnson (the Bakers’ predecessor-in-interest) built the original fence, reconstructed the fence after the first fence deteriorated, and maintained the fence until his last horse died around 2001, after which time no maintenance was done to the fence

1 until this dispute arose. At the time of the Bakers purchase, the fence was in a state of utter  
2 disrepair.

3 Thus, the fence at issue is insufficient to satisfy the requirement of proof by clear and  
4 convincing evidence of a substantial enclosure.

5 **3. There is an Issue of Fact as to Whether the Disputed Property has been “Usually**  
6 **Cultivated” or “Substantially Improved.”**

7 Because the Plaintiffs cannot prove that the Subject Property is substantially enclosed,  
8 I.C. § 5-210 requires that they prove that the property has been “usually cultivated or improved.”  
9 Under Idaho law, what constitutes an “improvement” for the purposes of I.C. § 5-210 is a  
10 question of fact. *Cluff v. Bonner County*, 121 Idaho 184, 186, 824 P.2d 115, 117 (1992) (citing  
11 *Trask v. Success Mining Co.*, 28 Idaho 483, 490, 155 P. 288, 290 (1916)). The improvement  
12 must necessarily vary according to the character of the land, its location, the uses to which it is  
13 usually put and all the circumstances bearing on that question. *Id.* The improvements must be of  
14 such a nature as to notify the true owner, actually or constructively, of the invasion of his rights  
15 and the adverse intent to claim the same by the occupant. *Trask*, 28 Idaho at 490.

16 In the instant case, the Plaintiffs have no proof that they usually cultivated the land in any  
17 manner, other than to perhaps mow a small section of grass located on the Disputed Property just  
18 South of the cabin. Evidence at trial will show that the majority of the fence line has been over-  
19 grown by heavy vegetation, and has been in that state for decades. The mowing of a small  
20 portion of the disputed property does not, in any manner, notify the true owner of the property  
21 that Coleman was claiming ownership up to the fence line. As such, there is no evidence that the  
22 property has been “usually cultivated.”

24 Additionally, the alleged “improvements” to the property do not satisfy the requirements  
25 of Idaho Code § 5-210. The Plaintiffs allege that they have made the following improvements to



1 the Disputed Property: moving a cabin onto the property line between the Coleman and Baker  
2 properties; making improvements to the interior of the cabin, replacing the roof of the cabin,  
3 digging a well which no longer exists, planting trees and other plants, replacing a culvert, and  
4 installing two log posts. What the Plaintiffs fail to acknowledge, however, is that none of these  
5 alleged improvements is of a nature as to delineate the extent and boundaries of the claimed  
6 adverse occupancy.

7 Less than half of the 300 square foot cabin is located upon the disputed property, with the  
8 substantial portion of the cabin being located on the Coleman side of the surveyed property line.  
9 Consequently, neither the cabin nor any improvements to it would indicate that Ms. Coleman  
10 was making a claim to the entire half acre that constitutes the Disputed Property. This is  
11 particularly true with respect to the alleged improvements to the interior of the cabin.

12 Similarly, none of the other alleged improvements give any indication as to the extent of  
13 the land allegedly being claimed. There is no indication that these "improvements" are located  
14 in a manner as to indicate the extent of the claim of ownership, or even that these improvements  
15 were definitively located on the Disputed Property. Without such evidence, these  
16 "improvements" cannot form the basis of a finding that the Plaintiffs "substantially improved"  
17 the property in a manner that would put the Bakers or their predecessor's in interest on notice  
18 that Ms. Coleman was asserting a hostile claim of ownership *up to the fence line*.

19 Moreover, many of the alleged improvements were made by an unrelated third party, Bob  
20 Camp, and not by the Plaintiffs. The Plaintiffs cannot rely the actions of unrelated third parties  
21 to support their claim.

22 The case of *Owen v. Boydstun*, 102 Idaho 31, 624 P.2d 413 (1981) is instructive on this  
23 issue. In that case, the Plaintiffs Richard and Mary Owen asserted an adverse possession claim  
24  
25

1 to a strip of property located on Payette Lake, near McCall, Idaho. The Owens owned property  
2 adjacent to the strip at issue in this case, which they utilized for summer vacations and week-end  
3 trips. During these visits, they would also use the disputed strip for access to the lake.

4 To prove their claim for adverse possession, the Owens offered the following evidence:

5 The appellants cleared brush from the disputed area. They removed  
6 rocks from and hauled sand onto the beach area. They also  
7 constructed a rail fence in the vicinity of the south boundary of  
8 their deeded property which extended into the disputed property to  
9 within 12 feet of the high water line of the lake. Appellants also  
built a simple firepit on the disputed property by surrounding a  
small area with loose rocks. Except for the aforementioned, the  
disputed property remained essentially in its wild state.

10 (*Id.* at 33).

11 Following a bench trial, the District Court issued a memorandum opinion finding that  
12 although the disputed property had been used by the appellants for the statutory period and that  
13 the payment of taxes was not an issue; the Plaintiffs had failed to meet their burden of proof as to  
14 the substantial enclosure or substantial improvement elements of the claim. The *Owen Court*  
15 summarized the District Court's findings as follows:

16 The court noted, however, that there was dispute over whether  
17 there had been "improvements" or "inclosure" sufficient to meet  
18 the remaining pertinent statutory requirements. In resolving this  
19 dispute, the court, after a survey of Idaho case law, concluded that  
20 I.C. s 5-210 was written in the disjunctive, and it would be  
21 "sufficient to show either a substantial inclosure, improvement or  
22 cultivation." Applying that conclusion, the court then found that  
23 the appellants had failed to meet their burden of proving that the  
24 disputed property was protected by a substantial inclosure within  
25 the intent and meaning of the statutory requirement. The court was  
of the opinion that to the south, the rail fence, failing to reach the  
lake, was insufficient; to the north, the natural growth of trees and  
bushes was likewise lacking; and generally, nowhere was there  
"construction" sufficient to meet the inclosure requirement.

**The [district] court found also that as for the requirement of  
improvements, none except for the rail fence, served in any**

1           sense to delineate the extent and boundaries of the claimed  
2           adverse occupancy. The rail fence by itself being insufficient,  
3           the court concluded the appellants had failed to meet their  
4           burden of proving that the disputed property had been  
5           “usually improved.”

6           (*Id.* at 415-416) (*emphasis added*).

7           In affirming the District Court’s decision, the *Owen Court* acknowledged that the exact  
8           character of the improvement or the inclosure may vary from case to case, but that “in the instant  
9           case, we cannot conclude otherwise than that given the particular facts presented to it, the district  
10          court properly found that appellants failed to satisfy the requirement of either improvement or  
11          inclosure.” *Id.* at 416.

12          Just as in *Owen*, the Plaintiffs in this case cannot meet their burden of proof as to the  
13          inclosure or improvement elements. Aside from the fence, none of the alleged improvements  
14          serve in any sense to delineate the extent and boundaries of the claimed adverse occupancy, and  
15          the fence itself is insufficient as it borders only one side of the three sided parcel, and does not  
16          even extend to the Eastern edge of the claimed property. Consequently, the Plaintiffs claim for  
17          adverse possession fails as a matter of law.

18               **4. The Plaintiffs Cannot Introduce Competent Evidence Supporting their**  
19               **Contention that the Defendant Coleman Paid the Real Property Taxes on the**  
20               **Subject Property for the Statutory Period.**

21          The trial testimony of representatives of both the Bonner County Assessor’s office and  
22          the Bonner County Treasurer’s Office will prove that the Johnsons, and later the Bakers, have  
23          paid all of the real property taxes on the Disputed Parcel since at least 1976, and that the  
24          Plaintiffs have never done so. To prove a claim for adverse possession, Idaho Code § 5-210  
25          requires proof by the claimant of the actual payment of taxes assessed with regard to the disputed

1 property. *Trappett v. Davis*, 102 Idaho 527, 530, 633 P.2d 592, 595 (1981). Because the  
2 Plaintiffs cannot do so, they cannot prove their claim for adverse possession.

3 ***a. The Plaintiffs Erroneously Rely upon the Lot Number Exception to the***  
4 ***Requirement for the Payment of Taxes.***

5 Rather than put forth competent evidence regarding the payment of taxes, the Plaintiffs  
6 contend that they need not meet this requirement because the “lot number exception” applies.  
7 This is incorrect.

8 Although Idaho Code § 5-210 generally requires proof by the claimant of the actual  
9 payment of taxes assessed with regard to the disputed property, *Trappett v. Davis*, 102 Idaho  
10 527, 530, 633 P.2d 592, 595 (1981), Idaho Courts have “fashioned several exceptions to the  
11 general rule which, when applied, have the effect of satisfying the tax requirement.” *Id.*

12 The “lot number” exception to the tax requirement states:

13 [I]n the case of boundary disputes between contiguous landowners,  
14 where one landowner can establish continuous open, notorious and  
15 hostile possession of an adjoining strip of his neighbor's land, and  
16 taxes are assessed by lot number or by government survey  
17 designation, *rather than by metes and bounds description*, payment  
18 of the taxes on the lot within which the disputed tract is enclosed  
19 satisfies the tax payment requirement of the ... statute.

20 *Scott v. Gubler*, 95 Idaho 441, 443-44, 511 P.2d 258, 260-261 (1973) (emphasis added).

21 Of critical importance is the assessor's actual basis for valuation of  
22 the property in question, i. e., whether his assessment was based on  
23 estimated acreage derived from physical inspection, value based on  
24 frontage feet, area calculated from a metes and bounds description,  
25 or some other method of valuation. The general tax rule focuses on  
actual payment as evidenced by the assessor's actual valuation.

*Trappett*, 102 Idaho at 530-31.

The “lot number exception,” however, is not applicable where the real property taxes are  
assessed by a metes and bounds description, rather than by platted lot and block number.

1 Trappett, 102 Idaho at 531 (“In the instant case, the properties of all parties involved were  
2 assessed on the basis of metes and bounds descriptions found in the respective deeds. Hence, [the  
3 claimants] cannot take advantage of the lot number corollary.”).

4 In the instant case, Ron Self of the Bonner County Assessor’s Office will testify that the  
5 parties properties are assessed on the basis of the legal descriptions contained in their respective  
6 deeds. Both Ms. Coleman’s and the Bakers’ deeds contain metes and bounds descriptions, rather  
7 than lot and block numbers. Consequently, the lot number exception does not apply.

8 ***b. Bonner County’s Assessment of Taxes based upon an Incorrect Conclusion***  
9 ***as to the Size of Coleman’s Property does not Prove that Coleman paid***  
10 ***Taxes on the Disputed Property.***

11 Ms. Coleman also contends that she has been assessed taxes for 1.97 acres, when she  
12 owns only .98 acres. (*Coleman Aff.*, ¶ 5). This, however, is not proof that Ms. Coleman has been  
13 paying taxes on the Disputed Property.

14 In addition to alleging that she has been occupying the Baker Property, Ms. Coleman also  
15 claims to have occupied a large, yet undefined, portion of the Gilbertson’s property, which  
16 adjoins the Plaintiffs’ property to the West. Thus, if Ms. Coleman is to be believed, she has been  
17 paying taxes on this portion of property as well as her own. Consequently, she cannot prove that  
18 her overpayment of taxes was due to the payment of taxes for the Disputed Property, as opposed  
19 to some other property. Consequently, she cannot prove her claim by clear and convincing  
20 evidence.

21 ***c. The Bonner County Assessor’s Records Proves the Bakers have Paid the***  
22 ***Taxes on The Disputed Property.***

23 According to the Bonner County Assessor’s Office records, the Bakers have paid  
24 property taxes on their parcel of land for the years of 2007 through 2010, and their predecessor’s  
25 in interest, the Johnsons’, paid taxes on the disputed property from 1970 to 2007. (*Ron Self Aff.*

¶¶ 21, 22). According to records of the Bonner County Assessor, the Disputed Property is legally owned by the Bakers and part of the property that they pay taxes on. (*Ron Self Aff.*, Exhibit B).

**E. The Plaintiffs Claim of Adverse Possession Upon a Written Claim of Right Fails for Lack of Proof of the Essential Elements of the Claim.**

The Plaintiffs claim of adverse possession by a written claim of title under Idaho Code § 5-207, also fails for lack of proof. According to that statute:

When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for twenty (20) years, the property so included is deemed to have been held adversely except that when it consists of a tract divided into lots, the possession of one (1) lot is not deemed a possession of any other lot of the same tract.

Idaho Code § 5-207.

Idaho Code § 5-208 defines possession as:

(1) Except as provided in subsection (2) of this section, for the purpose of constituting an adverse possession by a person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

(a) Where it has been usually cultivated or improved.

(b) Where it has been protected by a substantial enclosure.

(c) Where, although not enclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant.

(d) Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed, according to the usual course and custom of the

adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

First, the Plaintiffs cannot prove that their deed conveys to them any part of the Disputed Property; consequently, they do not have any written claim of title.

Second, for the same reasons set forth above, the Plaintiffs cannot prove that the Disputed Property is substantially enclosed, or has been usually cultivated or improved, or otherwise satisfies the requirements of I.C. § 5-208. For this reason, the claim must be denied.

**F. The Plaintiffs Claim of an Easement by Prescription Fails for Lack of Proof of Hostility and Continuous Use.**

The Plaintiffs have also asserted a claim for easement by prescription. The requirements for a prescriptive easement have been clearly established in Idaho:

A party seeking to establish the existence of an easement by prescription “must prove by clear and convincing evidence use of the subject property, which is characterized as: (1) open and notorious; (2) continuous and uninterrupted; (3) adverse and under a claim of right; (4) with the actual or imputed knowledge of the owner of the servient tenement (5) for the statutory period.” *Hodgins v. Sales*, 139 Idaho 225, 229, 76 P.3d 969, 973 (2003).

*Beckstead v. Price*, 146 Idaho 57, 62, 190 P.3d 876, 881 (2008).

Coleman acquired her property in 1970. At the time, the land upon which the driveway is located was owned by her parents, the Clarks. “When one occupies the land of a blood relative, such occupation is presumptively with the permission of the true owner.” *Berg*, 107 Idaho at 443. As the use of the road has always been permissive, the Plaintiffs claim for a prescriptive easement cannot be established.

**G. The Plaintiffs’ Claims for Trespass and Punitive Damages are Without Merit.**

Because the Bakers are the deeded owners of the Disputed Property, their erection of a fence thereupon does not constitute a trespass. Even if the Court were to award the Disputed

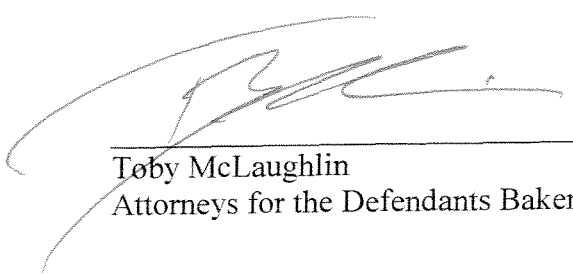
1 Property to the Plaintiffs, there is insufficient evidence upon which to make a finding as to  
2 damages caused from the alleged trespass.

3 Moreover, the alleged "self-help" methods taken by the Bakers in erecting a fence do not  
4 rise to the level of oppressive, fraudulent, malicious or outrageous conduct; especially in light of  
5 the Plaintiffs own actions of building a fence, running police tape, and otherwise attempting their  
6 own self-help. *Manning v. Twin Falls Clinic & Hosp., Inc.*, 122 Idaho 47, 52, 830 P.2d 1185,  
7 1190 (1992) ("It is well settled that punitive damages are not favored in the law and should be  
8 awarded only in the most unusual and compelling circumstances, and are to be awarded  
9 cautiously and within narrow limits.") Consequently, such claims must be denied.

### 10 III. CONCLUSION

11 As will be proven at trial, the Bakers are the deeded owners to the Disputed Property.  
12 They respectfully request that the Court enter a decree quieting title to the Disputed Property in  
13 the Bakers, and award costs and fees incurred in pursuit of this matter.  
14

15  
16 BERG & McLAUGHLIN, CHTD.

17  
18  3/21/11  
19 Toby McLaughlin  
20 Attorneys for the Defendants Baker  
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25



## CERTIFICATE OF SERVICE

On March 21<sup>st</sup>, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Pro Se Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> Other <i>email</i>
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Pro Se Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Pro Se Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other



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*Attorneys for Defendants Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAR 23 P 4: 56

MARIE SPOT  
CLERK DISTRICT COURT

*ap*  
DEPUTY

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN, an individual,  
NO. CV 2010-00703

Plaintiffs,

vs.

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

DEFENDANT BAKERS OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR  
ENTRY OF DEFAULT OF DEFENDANT  
JOHN PANDREA

COMES NOW, Defendants TIMOTHY AND CAROL BAKER, by and through their  
attorney of record, Toby McLaughlin, and hereby oppose the Plaintiffs' Application for Entry of  
Default of Defendant John Pandrea.

**I. FACTS**

1. The Plaintiffs Complaint was filed on April 19, 2010, and Summons issued the  
same day.

2. On June 23, 2010, the Plaintiffs filed a motion to allow service by publication on  
Defendant John Pandrea.

1 3. A hearing was held on July 7, 2010, at which time the Court declined to grant the  
2 motion.

3 4. The Plaintiffs filed an Amended Motion for Service by Publication on August 25,  
4 2010.

5 5. A hearing was held on Plaintiffs' Motion on September 8, 2010, at which time the  
6 Court authorized service by publication on John Pandrea.

7 6. On October 6, 2010 a Summons was issued by the Court for John Pandrea, to be  
8 served by publication.

9 7. Although service by publication was authorized, the Plaintiffs chose not to incur  
10 the costs of publication. (*Boyd-Davis Aff.*, ¶17).

11 8. Consequently, it is undisputed that John Pandrea has never been served with  
12 process in this case.

13 9. On February 19, 2011, John Pandrea filed a letter with the Court in which he notes  
14 that he was never served with legal process, effectively filing a notice of special appearance.

15 10. On March 2, 2011, Defendant John Pandrea filed his "Answer to Plaintiff's Notice  
16 of Intent to Take Default of Defendant John Pandrea, Defendant John Pandrea's Motion for  
17 Dismissal of all Charges Brought by Plaintiffs Against Defendant John Pandrea, and Defendant  
18 John Pandrea's Objection to Plaintiff's Unauthorized Practice of Law" with the Court.

19 11. On March 11, 2011, Plaintiff Terri Boyd-Davis filed her Application for Entry of  
20 Default on Defendant John Pandrea and her supportive affidavit.

## 21 **II. ARGUMENT**

22  
23 Plaintiff Boyd-Davis argues in her Application for Entry of Default of Defendant John  
24 Pandrea that the clerk of the Court should enter a default judgment against Mr. Pandrea because  
25

1 he has voluntarily appeared and has not answered the Plaintiffs complaint within the 20 days  
2 allowed. This is incorrect.

3 The Plaintiff Boyd-Davis argues that the Court should enter a default judgment against  
4 Mr. Pandrea under Idaho Rule of Civil Procedure 55 based on her allegation that Mr. Pandrea  
5 made a voluntary appearance by entering his February 15, 2011 response to her notice of intent  
6 to take default. In fact, Mr. Pandrea's pleading constitutes a special appearance under Idaho  
7 Rule of Civil Procedure 4(i). The rule states in pertinent part:

8 **(i) General or Special Appearance.**

9 (1) *General Appearance.* The voluntary appearance of a party or service of any  
10 pleading by the party, except as provided in subsection (2) hereof, constitutes  
voluntary submission to the personal jurisdiction of the court.

11 **(2) Motion or Special Appearance to Contest Personal Jurisdiction. A motion**  
12 **under Rule 12(b)(2), (4) or (5),** whether raised before or after judgment, a  
13 motion under Rule 40(d)(1) or (2), or a motion for an extension of time to answer  
or otherwise appear **does not constitute a voluntary appearance by the party**  
**under this rule.** The joinder of other defenses in a motion under Rule 12(b)(2),  
(4) or (5) does not constitute a voluntary appearance by the party under this rule.

14 IRCP 4 (emphasis added).

15 A motion under Idaho Rule of Civil Procedure 12(b) subsection 2 is a motion asserting  
16 lack of personal jurisdiction, a motion under subsection 4 is a motion asserting insufficiency of  
17 process and subsection 5 is asserting insufficiency of service of process. Mr. Pandrea's pleading  
18 asserted all of these defenses.

19 Although his letter is not formatted as a pleading, John Pandrea's letter filed herein on  
20 February 19, 2011, along with his Answer to Notice of Intent to Take Default filed March 2,  
21 2011, can only be read as a special appearance objecting to jurisdiction under Rule 4(i)(2). That  
22 rule states explicitly that the filing of a notice of special appearance "**does not constitute a**  
23 **voluntary appearance by the party under this rule.**" Because John Pandrea has neither been  
24  
25

1 served or appeared, the Court lacks personal jurisdiction over him and cannot enter a default  
2 judgment.

3 **CONCLUSION**

4 Defendants Baker oppose the Plaintiffs' Application for Entry of Default of Defendant  
5 John Pandrea on the grounds that Court lacks personal jurisdiction over Mr. Pandrea, as he has  
6 neither been served nor appeared in this matter.

7  
8 DATED this 23<sup>rd</sup> day of March, 2011.

9 BERG & McLAUGHLIN, CHTD.

10 By: 

11 TOBY McLAUGHLIN  
12 Attorneys for Defendants Baker  
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## CERTIFICATE OF SERVICE

On March 23, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Pro Se Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> Other <u>EMAIL</u>
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Pro Se Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Pro Se Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other



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7 *Attorneys for Defendants Gilbertson and Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAR 23 P 11:56

MARIE SCOTT  
CLERK DISTRICT COURT

DEPUTY

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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN, an individual,  
NO. CV 2010-00703

Plaintiffs,

vs.

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

DEFENDANT BAKERS' PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The Defendants Timothy and Carol Baker request that the Court adopt the following  
Findings of Fact and Conclusions of Law based on the evidence adduced at trial.

**I. FINDINGS OF FACT**

1. Defendants Timothy and Carol Baker own property located at 4430 Upper Pack  
River Road, Sandpoint, Idaho (hereinafter "Baker Property").
2. Defendant Bakers' property shares a common boundary to the north with property  
currently owned by Jean Coleman, Brian F. Davis and Terri Boyd-Davis (hereinafter "the  
Coleman Property").

1           3.     Through this legal action, the Plaintiffs are asserting claims of ownership of a  
2 triangular half acre portion of the Baker Property, which is adjacent to and just South of the  
3 Coleman Property (hereinafter "the Disputed Property" or "the Disputed Parcel").

4           4.     Plaintiff Coleman acquired the Coleman Property by gift from her parents, Harry  
5 and Edith Clark by means of Warranty Deed executed and recorded on December 23<sup>rd</sup>, 1970, and  
6 recorded in Bonner County under instrument number 131005.

7           5.     At the time that Coleman was gifted her property, Harry and Edith Clark owned  
8 property both to the South and to the West of the Coleman Property.

9           6.     The Coleman property is bordered on the North and the East by a public road by  
10 the name of Upper Pack River Road.

11           7.     On September 3, 1971, the Clarks conveyed the parcel of real property which lies  
12 adjacent and to the South of the Coleman property to Clifford and Joan Johnson by Warranty  
13 Deed recorded on April 4, 1976, in the records of Bonner County under instrument number  
14 156495.

15           8.     The Johnsons ultimately purchased three contiguous parcels of property from the  
16 Clarks, as well as another parcel from an unrelated third party, but only the Johnsons'  
17 Northernmost parcel borders property owned by Jean Coleman.

18           9.     Both the Johnson family and the Clark family were longtime residents of the  
19 Upper Pack River valley area.

20           10.    Clifford Johnson's mother and step-father owned Buck & Edna's, a local tavern  
21 and restaurant that served as a gathering spot for those in the neighborhood.

22           11.    The Clarks were the owners of a large section of land in the area.  
23  
24  
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1           12.    The Johnsons were close family friends with the Clarks. Cliff Johnson had known  
2 Harry Clark since Johnson was nine years old, and they were friends until Mr. Clark's death in  
3 1975.

4           13.    Clifford Johnson knew the Clarks' eight children, and eventually, the Clarks'  
5 grandchildren as well.

6           14.    Even after Harry Clark's death, the families remained close, with the Johnsons'  
7 children often socializing with the Clarks' grandchildren.

8           15.    It was common place for the neighbors in the area to allow each other access to  
9 one another's land.

10          16.    Subsequent to the Johnsons acquiring their northernmost parcel from the Clarks in  
11 1971, Mr. Clark moved a cabin onto the Coleman Property.

12          17.    The cabin sits upon the property line between the Coleman property and Johnson's  
13 northernmost parcel, with part of the cabin encroaching onto the Johnson property.

14          18.    Soon after acquiring his northernmost parcel, Clifford Johnson constructed a  
15 wooden fence to the South of his boundary line for the purpose of keeping his horses penned.  
16

17          19.    Mr. Johnson knew that he owned property to the North of the fence, but located  
18 the fence based solely upon the topography of the land, not on either the actual or perceived  
19 location of the boundary of his property.

20          20.    The fence was never intended to be a boundary fence. Rather, it was a stock fence  
21 built solely for the purpose of keeping the Johnsons' horses from going beyond the fence.

22          21.    In fact, the fence does not run along either the boundary line of the property to the  
23 North, or the boundary line between the property to the West, but meanders according to the  
24 topography of the land.  
25

1           22.    Moreover, the fence does not even extend to Johnson's property line to the West,  
2 but stops short of the Upper Pack River Road.

3           23.    The wooden fence was initially constructed with a gate, through which Johnson  
4 would travel to obtain hay from Harry Clark until Clark's death in 1975.

5           24.    Plaintiff Jean Coleman claims that she has always believed that her property  
6 extended to the fence, even though the fence did not exist at the time she acquired her property.

7           25.    Coleman asserts that Harry Clark intended to deed her the property to the fence  
8 line , but did not properly draft the legal description in her deed.

9           26.    Harry and Edith Clark had established a Trust to manage their properties after their  
10 death.

11          27.    Following Harry Clark's death in 1975, the Bank of Idaho was named as Trustee  
12 for the Clark Estate.

13          28.    In 1976, Plaintiff Jean Coleman made a request to the Trustee for the conveyance  
14 of additional property in lieu of a debt that she claimed was owed from the Trust to Coleman for  
15 the payment of funeral expenses.

16          29.    The Trustee retained the services of Tucker Engineering Consultants to perform a  
17 survey of the land owned by the Clark Estate, and the land which had been transferred from the  
18 Clark Estate.

19          30.    Tucker Engineering recorded the "Survey for the Harry Clark Estates," dated July  
20 3, 1979, under instrument number 223083 (hereinafter "the Clark Survey").

21          31.    The Clark Survey correctly depicts the boundary line between the Coleman  
22 Property and the Baker Property.  
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1           32.    Subsequent to the recording of the 1979 survey, Jean Coleman caused a second  
2 survey to be conducted by Tucker Engineering Consultants.

3           33.    To this end, Tucker Engineering recorded the "Survey for Jean L. Coleman &  
4 Clark Estate," dated June 26, 1981, under instrument number 223083 (hereinafter "the Coleman  
5 Survey").

6           34.    Along with the Coleman Survey, Tucker Engineering provided legal descriptions  
7 for the Coleman Property, the Disputed Property, and the property directly to the West of the  
8 Coleman Property.

9           35.    If Plaintiff Coleman did subjectively believe she owned up to the fence line, she  
10 received actual *and* constructive notice that this belief was incorrect, because both the Tucker  
11 Survey and the Coleman Survey identify what is the true boundary line between the Coleman  
12 and Johnson properties.

13           36.    Despite having received notice that her alleged belief that the fence line marked  
14 her property line was incorrect, Coleman failed to take any action to address what she is now  
15 claiming to be erroneous surveys.

16           37.    By waiting 27 years to bring an action for ownership of the Disputed Property,  
17 Coleman allowed the evidence to grow stale – witnesses' memories have faded, witnesses have  
18 died or moved away, evidence can no longer be found, etc.

19           38.    Coleman's inexcusable delay in bringing suit has caused material prejudice to the  
20 Defendants Baker.

21           39.    After an unknown number of years, the wooden fence fell into a state of disrepair,  
22 and was replaced by Mr. Johnson with metal posts strung with a barbed wire fence.  
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1           40.    This barbed wire fence, however, was not located exactly in the location of the  
2 wooden fence, but ran along a different course, at intermittent distances from the wooden fence.

3           41.    As with the wooden fence, the barbed wire fence was also installed for the sole  
4 purpose of keeping the Johnsons' horses from going beyond the fence.

5           42.    After the Johnsons' last horse died in 2001, the Johnsons ceased maintaining the  
6 fence in any manner, and it fell into a state of disrepair.

7           43.    Plaintiff Jean Coleman has never resided on the Coleman Property.

8           44.    Coleman's use of the Coleman Property consisted primarily of occasional family  
9 gatherings such as barbeques and camping in the summer months.

10          45.    For a brief period, an unrelated third party named Bob Camp lived at the cabin;  
11 however, Mr. Camp's actions cannot be treated as actions taken by the Plaintiffs.

12          46.    Just prior to the Baker's acquiring the Johnsons' property, the cabin was occupied  
13 during the summer months by Mary Pandrea and her mother, Ethel Clark.

14          47.    The Plaintiffs have presented no evidence that they treated the fence line as the  
15 boundary line to their property.

16          48.    Rather, the Plaintiffs have presented evidence only of the use of the portion of the  
17 Disputed Property which surrounds the Coleman cabin.

18          49.    Such use would not have put a reasonable landowner on notice that Coleman was  
19 claiming ownership of all of the land North of the fence line.

20          50.    No agreement was formed between Coleman and the Johnsons that the fence was  
21 to be the boundary line between their respective properties.

22          51.    When Coleman first acquired her property, her parents owned the Disputed  
23 Property.  
24  
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1           52.   Consequently, Ms. Coleman's initial use of the Disputed Property, if any, was with  
2 the presumed permission of her parents.

3           53.   The Johnsons were close family friends of the Clarks.

4           54.   The Johnsons had no objection to Coleman and her family using the northern part  
5 of their property.

6           55.   Coleman and her family had implied permission to use the northern portion of the  
7 Johnsons' Property.

8           56.   Until 2008, the Plaintiffs made no unequivocal acts which would have notified the  
9 Johnsons that they were making a hostile claim of ownership to the Disputed Property.

10          57.   When the Bakers purchased the Johnsons property, the fence was overgrown with  
11 vegetation, and consisted of metal fence posts buried in vegetation with the barbed wire lying  
12 mostly on the ground.

13          58.   When the Bakers walked the property prior to purchase, they did not notice the  
14 fence, due to its dilapidated condition and the vegetation having overgrown the fence line.

15          59.   The Bakers acquired the Johnsons' property by Warranty Deed executed and  
16 recorded on June, 1, 2007, records of Bonner County, Idaho as instrument number 729995.

17          60.   Soon after the Bakers acquired their property, their neighbor to the South indicated  
18 that he was the owner of a portion of the land that the Bakers had understood to be theirs.

19          61.   This caused the Bakers to contract with Glahe & Associates to survey the Bakers'  
20 property.  
21

22          62.   A survey was subsequently performed by surveyor David Evans of Glahe &  
23 Associates, and the "Record of Survey for Tim Baker" dated November, 2007, was recorded in  
24 Bonner County under instrument number 741564 (hereinafter "the Baker Survey").  
25

1           63. The Baker Survey correctly identifies the boundary line between the Coleman  
2 Property and the Baker Property.

3           64. After obtaining the Baker Survey, Defendant Tim Baker attempted to discuss the  
4 encroachments identified on the survey with individuals who he found near the Coleman cabin.

5           65. Soon thereafter, the Plaintiffs began to take aggressive actions by reconstructing  
6 the old barbed wire fence, by posting no trespassing signs, and by surrounding a portion of the  
7 Disputed Property with bright yellow police tape.

8           66. The Defendants subsequently had a chain link fence constructed within the  
9 Disputed Property in an effort to protect their ownership of the Disputed Parcel. This fence was  
10 designed in such a manner as to allow the Plaintiffs access to the cabin while preventing the  
11 Plaintiffs from accessing other parts of the Baker Property.

12           67. On June 11, 2009, Jean Coleman transferred an undivided interest in the Coleman  
13 Property to Plaintiffs Terri-Lynn Boyd Davis and Brian Davis by Quitclaim Deed executed and  
14 recorded on June 16, 2009, in the records of Bonner County under instrument number 774089.

15           68. There is no fence or other man-made or natural structure which delineates the  
16 Western boundary of the Disputed Property.

17           69. There is no fence or other man-made or natural structure which delineates the  
18 Northern boundary of the Disputed Property.

19           70. Consequently, the Disputed Property is not substantially enclosed.

20           71. The Plaintiffs have not planted crops or otherwise cultivated the Disputed  
21 Property.  
22  
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1 72. Although the Plaintiffs have made some minor improvements within the Disputed  
2 Property, the improvements were not of such a nature as to sufficiently delineate the boundaries  
3 of the property being claimed.

4 73. The Bonner County Assessor's Office determines the taxes to be paid on the  
5 parcels at issue based upon the legal descriptions contained within the parties respective deeds.

6 74. In this case, the Bonner County Assessor has included the Disputed Property in  
7 Tax Parcel #27.

8 75. The taxes for Tax Parcel #27 have been paid by the Johnsons from 1976 until  
9 2007.

10 76. The taxes for Tax Parcel #27 have been paid by the Bakers since 2007.

11 77. During the period in question, Bonner County has not assessed the taxes for the  
12 Disputed Property to Jean Coleman or the other Plaintiffs.

13 78. The Plaintiffs have not submitted any proof that they paid the taxes on the  
14 Disputed Property.

15 79. Jean Coleman has historically accessed her property by means of a driveway that  
16 crosses Defendant Gilbertson and Defendant Baker's respective properties.

17 80. At the time Jean Coleman acquired her property, the land upon which the  
18 driveway is located was owned by her parents, the Clarks.

19 81. The Plaintiffs have never taken any action that would lead a reasonable land owner  
20 to conclude that they were making a hostile claim for a prescriptive right to use the road.

21 82. Rather, the Plaintiffs' use of the driveway has always been with the implied  
22 permission of the property owners.  
23  
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1 83. Although the driveway has historically been used to access the Coleman Property,  
2 it is not the only means of legal access, as the Coleman Property abuts the Upper Pack River  
3 Road, which is a public road.

4 84. The Plaintiffs have failed to present evidence as to the location or the width of the  
5 driveway at the time of severance of the parcels, or the use of that road prior to severance.

## 6 II. CONCLUSIONS OF LAW

### 7 A. Deeded Ownership of the Disputed Property.

8 1. The Bakers are the deeded owners of the Disputed Property, as evidenced by the  
9 three surveys of record.

10 2. To the extent that the Plaintiffs have asserted a claim for the reformation of the  
11 Coleman deeds based on the alleged mistake in drafting by Harry Clark, such a claim is barred  
12 by the three year statute of limitations set forth in Idaho Code § 5-244. *Aitken v. Gill*, 108 Idaho  
13 900, 901, 702 P.2d 1360, 1361 (Idaho Ct. App. 1985) (“[W]e hold that an action seeking relief  
14 from mistake will be time-barred under I.C. § 5-218(4) unless it is filed within three years after  
15 the mistake could have been discovered in the exercise of due diligence.”).

16 3. Because the Bakers hold record title to Disputed Property, Idaho law presumes that  
17 they are the legal owners. *Luce v. Marble*, 142 Idaho 264, 271, 127 P.3d 167 (2005).

18 4. The Plaintiffs may overcome this presumption only by establishing a claimed right  
19 to Disputed Property through clear and convincing evidence. *Id.* (“[O]ne who would claim the  
20 ownership of property of which the legal title stands or record in another ... must establish such  
21 claim by evidence that is clear, satisfactory and convincing.” quoting *Russ Ballard & Family*  
22 *Achievement Inst.*, 97 Idaho at 579, 548 P.2d at 79).

### 23 B. Boundary by Agreement

24  
25



1           5.     The Plaintiffs have failed to prove by clear and convincing evidence that boundary  
2 line was uncertain or in dispute.

3           6.     The Plaintiffs have failed to prove by clear and convincing evidence that both  
4 Coleman and the Johnsons treated the fence line as fixing the boundary between their properties.

5           7.     Because the evidence at trial established that Johnson built the fence to pen his  
6 horses rather than mark a boundary line, no presumption arises that the fence was originally  
7 located to mark the boundary between the Coleman and Johnson properties.

8           8.     The shape of the fence does not lend itself to an inference that the fence was  
9 intended to mark the boundary line, as it does not extend to the Eastern boundary of the  
10 properties, and it extends at the Western end across and through another landowner's property.

11           9.     Based upon the testimony of Clifford Johnson, the shape of the fence, and the lack  
12 of evidence that the parties treated the fence as the boundary, it is not reasonable to assume the  
13 existence of an agreement between the parties that the fence would act as the boundary.

14           10.    The Plaintiffs have failed to prove by clear and convincing evidence their claim for  
15 boundary by acquiescence.  
16

17 **C.    Adverse Possession.**

18           11.    The Plaintiffs' use of Disputed Property was with the implied permission of the  
19 Johnsons; therefore, the Plaintiffs have failed to prove by clear and convincing evidence that  
20 their use of the Disputed Property was sufficiently hostile as to support their claim for adverse  
21 possession.

22           12.    The Plaintiffs have failed to prove by clear and convincing evidence that the  
23 Disputed Property is substantially enclosed as required by Idaho Code § 5-208 and 5-210.  
24  
25

1           13. The Plaintiffs have failed to prove by clear and convincing evidence that the  
2 Disputed Property was usually cultivated during the statutory period as required by Idaho Code §  
3 5-208 and 5-210.

4           14. The Plaintiffs have failed to prove by clear and convincing evidence that the  
5 Disputed Property was improved in the manner necessary to support a claim for adverse  
6 possession.

7           15. The Plaintiffs have failed to prove that they paid the taxes for the Disputed  
8 Property; therefore, their claim for oral adverse possession has not been established by clear and  
9 convincing evidence.

10           16. The Plaintiffs have failed to prove by clear and convincing evidence that their use  
11 of the Disputed Property was sufficiently continuous as to support a claim for adverse  
12 possession.

13 **D. Easement.**

14           17. The Plaintiffs use of the driveway began at a time in which her parents owned the  
15 property upon which the road is located; consequently, such use is presumed to be permissive.  
16

17           18. The Plaintiffs have failed to prove by clear and convincing evidence that they  
18 made any unequivocal actions that would have put the owner of said property on notice of a  
19 hostile claim to the driveway.

20           19. The Plaintiffs use of the driveway was with the permission of its true owner.

21           20. The Plaintiffs have failed to prove by clear and convincing evidence that their use  
22 of the driveway was sufficiently continuous so as to support a claim for prescriptive easement.

23           21. The Plaintiffs have failed to prove by clear and convincing evidence the existence  
24 of an easement by prescription.  
25

1           22.    The Plaintiffs have failed to prove by clear and convincing evidence the existence  
2 of an easement by implication.

3           23.    The Plaintiffs have failed to prove that without the driveway, they lack access to a  
4 public road.

5           24.    The Plaintiffs have failed to prove by clear and convincing evidence the existence  
6 of an easement by necessity.

7 **E.    Trespass.**

8           25.    The Bakers are the owners of the Disputed Property.

9           26.    As the owners of the Disputed Property, they are entitled to remove brush and  
10 build fences thereon.

11          27.    The Plaintiffs have failed to present any evidence that the Bakers trespassed upon  
12 the Coleman Property.

13          28.    The Plaintiffs have failed to present any evidence that they were damaged by the  
14 alleged trespass by the Bakers.

15          29.    The Plaintiffs, therefore, have failed to establish their claim of trespass against the  
16 Defendant Bakers.

17 **F.    Punitive Damages**

18          30.    The Plaintiffs have failed to prove by clear and convincing evidence that the  
19 Bakers acted in a manner that was oppressive, fraudulent, malicious or outrageous.

20          31.    The Plaintiffs claim for punitive damages is barred by the doctrine of unclean  
21 hands, as they acted in manner that constitutes self-help in attempting to prevent the Bakers from  
22 accessing the Disputed Property prior to the filing of this lawsuit.  
23

24 **G.    Ejectment**  
25

1 32. As the owners of the Disputed Property, the Bakers have the right to sole  
2 possession thereof.

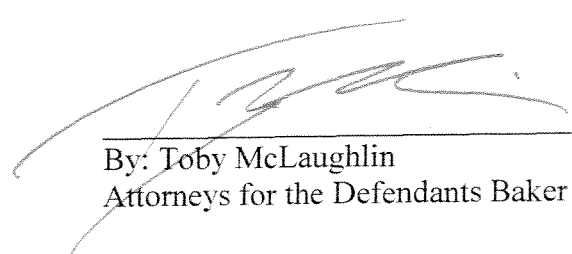
3 33. The Coleman cabin encroaches upon the Baker Property, and the Bakers are  
4 entitled to remove said Cabin from their property.

5 34. The Bakers are entitled to remove any other encroachments from their property.

6 35. The Plaintiffs are further enjoined from any further actions of trespass or  
7 encroachment upon the Baker Property, including the Disputed Property.

8  
9 DATED this 28<sup>th</sup> day of March, 2011

10 BERG & McLAUGHLIN, CHTD

11  
12   
13 By: Toby McLaughlin  
14 Attorneys for the Defendants Baker  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE OF SERVICE

On March 23, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

*Pro Se Plaintiff*

- ☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☒ Other EMAIL

Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

*Pro Se Plaintiff*

- ☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☐ Other

Jean L. Coleman  
12738 N. Strahorn Rd.  
Hayden, ID 83835

*Pro Se Plaintiff*

- ☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☐ Other

John Pandrea  
P.O. Box 1052  
Mountain View, HI 96721

- ☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☐ Other

  
Stephanie G. Allen

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAR 24 A 10:25

MARIE SCOTT  
CLERK DISTRICT COURT  
DEPUTY

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
Email: [terriboyddavis@me.com](mailto:terriboyddavis@me.com)  
*Plaintiff In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS, et al.;	)	Case No: CV2010-0703
	)	
Plaintiffs,	)	<b>MOTION TO SHORTEN TIME</b>
	)	
v.	)	<b>Hearing Date: March 28, 2011</b>
	)	<b>Hearing Time: 9:00 a.m.</b>
	)	
MARY PANDREA, et al.;	)	<b>BONNER COUNTY COURTHOUSE</b>
	)	<b>Judge Steve Verby</b>
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff TERRI BOYD-DAVIS, and hereby moves the Court for an order shortening time within which to hear Plaintiff's Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply With Discovery Order, allowing the hearing date to be set for March 28, 2011 at 9:00 a.m. in front of the Honorable Judge Verby.

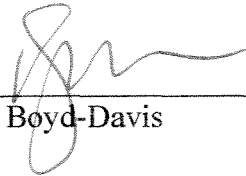
Good cause exists for the Court to grant the motion based on the fact that trial in this matter is scheduled to begin on the date and time of the requested hearing. Defendant Timothy Baker has failed to comply with the Court's Discovery Order issued at a hearing on February 23, 2011 on Plaintiff's Motion to Compel, and the documents the defendant refuses to produce are essential to plaintiff's claims being heard at trial beginning March 28, 2011.

Good cause also exists in that Defendant Timothy Baker's discovery responses were due on February 18, 2011 and the Court's Pretrial Order provides that "[a]ll written discovery shall be initiated so that timely responses shall be completed thirty-five (35) days before trial." Plaintiff requires these documents to prepare for trial. Time is of the

essence due to the fact that trial is imminent and the written discovery deadline passed over a month ago.

For the above reasons, Plaintiff Terri Boyd-Davis respectfully requests that this Court grant her motion to shorten time.

DATED this 24<sup>th</sup> day of March, 2011.

  
\_\_\_\_\_  
Terri Boyd-Davis

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24<sup>th</sup> day of March, 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

### MOTION TO SHORTEN TIME

Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-263-7557
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Defendant</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:



Brian Davis



STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAR 24 A 10:25

MARIE SCOTT  
CLERK DISTRICT COURT  
DEPUTY

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
*Plaintiff In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS and BRIAN F.	)	Case No: CV2010-0703
DAVIS, husband and wife; and JEAN L.	)	
COLEMAN, an individual;	)	
	)	<b>PLAINTIFF TERRI BOYD-DAVIS'</b>
Plaintiffs,	)	<b>MOTION FOR SANCTIONS AGAINST</b>
	)	<b>DEFENDANT TIMOTHY BAKER FOR</b>
v.	)	<b>FAILURE TO COMPLY WITH</b>
	)	<b>DISCOVERY ORDER</b>
MARY PANDREA, an individual;	)	Hearing Date: March 28, 2011
TIMOTHY BAKER and CAROL BAKER,	)	Hearing Time: 9:00 a.m.
husband and wife; JAMES GILBERTSON	)	BONNER COUNTY COURTHOUSE
and NELLIE GILBERTSON, husband and	)	Judge Steve Verby
wife; JOHN PANDREA, an individual;	)	
and DOES 1-50, inclusive;	)	
	)	
Defendants.	)	
	)	

**INTRODUCTION**

COMES NOW Plaintiff TERRI BOYD-DAVIS and motions this Court herein and by Affidavit for an order sanctioning Defendant Timothy Baker ("Baker") for his failure to comply with this Court's Order that he produce documents requested by plaintiff's discovery requests.

**ARGUMENT**

Plaintiff Terri Boyd-Davis ("Boyd-Davis") brings her motion pursuant to I.R.C.P. 37(e) due to Defendant Baker's failure to comply with this Court's Order to produce the tax returns requested by plaintiff's second set of discovery requests served on Baker on January 19, 2011.

On February 23, 2011, this Court heard Plaintiff Boyd-Davis' motion brought under I.R.C.P. 37 requesting an order requiring Defendant Timothy Baker to provide adequate and appropriate responses to discovery propounded on him by plaintiffs pursuant to Plaintiff's

Motion to Compel Plaintiffs' Request for Admissions, Answers to Interrogatories, and Production of Documents to Defendant Timothy Baker, Set Two. The Court granted plaintiff's motion and ordered Baker to provide an adequate response to Interrogatory No. 36 and to produce the documents requested in Request for Production No. 9 and Request for Production No. 13 no later than March 11, 2011.

On March 11, 2011 at 4:35 p.m., Boyd-Davis received an email from the offices of Baker's attorney, which had various documents attached to it including Defendant Timothy Baker's Supplemental Responses to Plaintiffs' Request for Admission, Answers to Interrogatories and Production of Documents. The supplemental responses were incomplete. (*See Affidavit of Terri Boyd-Davis ¶ 3, filed herewith*).

A. DEFENDANT BAKER DID NOT PRODUCE THE DOCUMENTS REQUESTED BY PLAINTIFF'S REQUEST FOR PRODUCTION NO. 13.

Plaintiff's Request for Production No. 13 requested that Defendant Baker produce the following: "All federal and state tax returns filed by you for the years 2007 through 2010."

In the response served by Baker on March 11, 2011, he responded as follows: "See attached. The Bakers do not have their tax returns prior to 2009, and have not yet filed a return for 2010." (*Id.*).

Defendant Baker did not even attempt to explain a reason as to why he does not have his tax returns prior to 2009. He did not even attempt to explain ways in which he has attempted to obtain the tax returns for the years 2007 and 2008. He simply stated that he did not have those returns. (*Id. at ¶ 4*).

On March 15, 2011, plaintiff Boyd-Davis sent an email to Baker's attorney requesting the missing tax returns and providing him with links to two websites where he could obtain copies of his returns on the same day. She requested he provide the copies to her by March 17, 2011. She told him if he did not that she would bring a motion for sanctions. (*Id. at ¶ 6*).

On March 17, 2011, plaintiffs Boyd-Davis and Brian Davis ("Davis") met with Baker's attorney. Boyd-Davis inquired on production of the tax returns. Baker's attorney said he forwarded plaintiff's email to Baker but that he had not responded. He told Boyd-Davis, "Do what you gotta do." (*Id. at ¶ 7*).

Obtaining copies of previous years' tax returns is relatively easy to do. Baker's 2009 Tax Return indicates that he has a professional prepare his tax returns. Baker does not indicate whether he contacted his tax preparer and asked him to either email or fax him copies of his

returns. He does not indicate any efforts he has made to obtain copies of his returns. In situations in which a person no longer has copies of their returns, there are various ways available to obtain copies of tax returns. They can be requested directly from the IRS. They can also be obtained through a company called FileLate, which claims it can obtain the prior years' tax returns in 20 minutes. There are likely many other ways as well. These two ways were found by this plaintiff in less than five minutes' time by simply searching the internet. (*Id.* at ¶ 4).

It is apparent that Defendant Baker has not made an effort to comply with this Court's Order. Defendant Baker is in contempt for his refusal to comply with the Court's Order.

B. SANCTIONS AGAINST DEFENDANT TIMOTHY BAKER AND/OR HIS ATTORNEY ARE WARRANTED FOR BAKER'S PURPOSEFUL FAILURE TO COMPLY WITH THIS COURT'S ORDER

Idaho Rule of Civil Procedure 37(e) provides that "any court may in its discretion impose sanctions or conditions, or assess attorney's fees, costs or expenses against a party or the party's attorney for failure to obey an order of the court made pursuant to these rules."

Defendant Baker's defiant attitude toward this Court in failing to make even minimal efforts to comply with its Order has caused Plaintiff Boyd-Davis unnecessary hardship in obtaining documents she is entitled to in order to properly prepare her case for trial.

During a time when plaintiff's time and efforts should be focused on trial preparation, she has been forced to focus her attentions on issues that should have been resolved no later than 35 days prior to trial pursuant to this Court's mandated discovery cutoff date. Instead, a week prior to trial, plaintiff has had to utilize precious time in preparing this motion due to Baker's impertinence. Additionally, plaintiff has incurred expenses due to taking time off work to draft this motion. Plaintiff has also incurred unnecessary stress in having to deal with this on top of the stress already present in preparing for trial. As a result, plaintiff Boyd-Davis should be awarded sanctions for defendant's harmful and impudent actions.

In addition to monetary sanctions, it is also appropriate for the Court to make an "order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence." I.R.C.P. 37(b)(2)(B).

Plaintiff Boyd-Davis requested evidence of Baker's income and other evidence of his wealth because it is relevant to her claim for punitive damages. Defendant Baker has made claims and assertions of his alleged wealth to plaintiffs in the past. Boyd-Davis has concluded

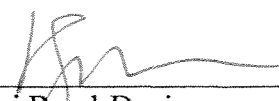
from Baker's lifestyle, actions, and his statements, that money is no object in his quest to obtain control of the property in dispute in this case. In 2008, Baker claimed to "have all the money" and threatened to take the plaintiffs' money. As the Baker's attorney has indicated on several occasions to this Court during hearings throughout the past ten months since this case was filed, the Baker's are often "out of the country," "traveling," or "at their home in California," which seems to indicate a leisurely lifestyle indicative of people of means. Boyd-Davis believes Baker's withholding of his 2007 and 2008 tax returns is because those returns indicate substantially greater income than his 2009 returns do. Boyd-Davis believes Baker does not want any evidence of his wealth to be taken into consideration by this Court should the Court determine an award of punitive damages is warranted in this case.

As a result of defendant's failure to provide the requested tax returns, it is an appropriate sanction that this Court should prohibit Baker from defending against plaintiff's presumption of his significant wealth at trial. In any award of punitive damages this Court may award at trial, defendant Baker should be considered to have significant wealth and any evidence or testimony asserting otherwise should be prohibited.

**WHEREFORE**, Plaintiff TERRI BOYD-DAVIS prays this Court order Defendant Baker to:

1. Produce his 2007 and 2008 tax returns to plaintiff within 24 hours of this Court's ruling;
2. Pay sanctions to plaintiff Boyd-Davis in an amount of one thousand dollars (\$1,000) by March 28, 2011; and
3. Be prohibited from defending against plaintiff's presumption of his significant wealth in any considerations for punitive damages that may be awarded.

DATED this 24<sup>th</sup> day of March 2011.

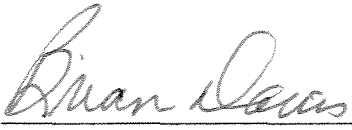
  
\_\_\_\_\_  
Terri Boyd-Davis

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24<sup>th</sup> day of March, 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

**PLAINTIFF TERRI BOYD-DAVIS' MOTION FOR SANCTIONS  
AGAINST DEFENDANT TIMOTHY BAKER  
FOR FAILURE TO COMPLY WITH DISCOVERY ORDER**

Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-263-7557
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Defendant</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
\_\_\_\_\_  
Brian Davis

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2011 MAR 24 10:25

MAR E SCOTT  
CLERK DISTRICT COURT  
*ap*  
DEPUTY

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
*Plaintiff In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS and BRIAN F.	)	Case No: CV2010-0703
DAVIS, husband and wife; and JEAN L.	)	
COLEMAN, an individual;	)	
	)	<b>AFFIDAVIT OF TERRI BOYD-DAVIS IN</b>
Plaintiffs,	)	<b>SUPPORT OF HER MOTION FOR</b>
	)	<b>SANCTIONS AGAINST DEFENDANT</b>
v.	)	<b>TIMOTHY BAKER FOR FAILURE TO</b>
	)	<b>COMPLY WITH DISCOVERY ORDER</b>
MARY PANDREA, an individual;	)	
TIMOTHY BAKER and CAROL BAKER,	)	
husband and wife; JAMES GILBERTSON	)	
and NELLIE GILBERTSON, husband and	)	
wife; JOHN PANDREA, an individual;	)	
and DOES 1-50, inclusive;	)	
	)	
Defendants.	)	
	)	
STATE OF IDAHO	)	
	) ss.	
County of Kootenai	)	

1. I, Terri Boyd-Davis, swear under oath that:
2. I am one of the Plaintiffs in this action. I am over the age of 18, have personal knowledge of the facts contained herein, and am competent to testify to these facts.
3. I make this affidavit in support of my Motion for Sanctions Against Defendant Timothy Baker for Failure to Comply with Discovery Order on the following facts.
4. On March 11, 2011 at 4:35 p.m., I received an email from the Stephanie Allen, the paralegal of Baker's attorney, Toby McLaughlin. Attached to the email were various documents including Defendant Timothy Baker's Supplemental Responses to Plaintiffs' Request for

Admission, Answers to Interrogatories and Production of Documents. I noted that the supplemental responses were incomplete, specifically Timothy Baker ("Baker") did not provide copies of his federal and state tax returns filed by him for 2007 and 2008, as requested by Request for Production No. 13. The response by Baker stated: "See attached. The Bakers do not have their tax returns prior to 2009, and have not yet filed a return for 2010." A true and correct copy of Baker's Supplemental Responses is attached hereto as Exhibit "1."

4. Defendant Baker did not give a reason as to why he does not have his tax returns prior to 2009 nor did he attempt to explain ways in which he has attempted to obtain the tax returns for the years 2007 and 2008. I got on my computer and did a quick search for "obtain copy of federal tax returns." A number of websites appeared. I clicked on two of those websites and determined that it is easy and quick to obtain copies of tax returns for the years 2007 and 2008. One company, FileLate, claims to be able to get a copy of previous years' tax returns "in 20 minutes." I completed this search in less than five minutes. Attached hereto as Exhibit "2" are true and correct copies of printouts from these two websites.

5. Baker's 2009 Tax Return (Form 1040, page 2) indicates that he has a professional prepare his tax returns. It also indicates that he had a professional prepare his 2008 return, which is indicated on Line 22 of his Schedule A. Baker gives no indication as to whether he contacted his tax preparer and asked him to either email or fax him copies of his returns. A true and correct copy of the two pages of Baker's 2009 tax return produced to me on March 11, 2011 and discussed in this paragraph are attached hereto as Exhibit "3."

6. On March 15, 2011, I sent an email to Toby McLaughlin, Baker's attorney requesting the missing tax returns and providing him with links to two websites where Baker could obtain copies of his returns on the same day. I requested he provide the copies to her by March 17, 2011. I told him if he did not that I would bring a motion for sanctions. A true and correct copy of this email exchange is attached hereto as Exhibit "4."

7. On March 17, 2011, my husband, Brian Davis, and I met with Baker's attorney. I inquired on production of the tax returns. Mr. McLaughlin said he forwarded my email to Baker but that he had not responded. He told me, "Do what you gotta do."

8. Defendant Baker's failure to make even minimal efforts to comply with the Court Order has caused me unnecessary hardship in obtaining these documents to which I am entitled and which I have needed in order to properly prepare my case for trial. My time and efforts should be focused on trial preparation at this time, not chasing down tardy discovery responses.

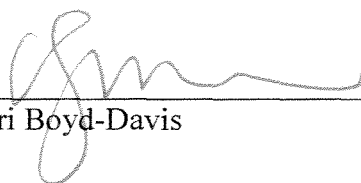
Because of Baker's disobedience to the Court's order, I have had to utilize precious time in preparing this motion. I have also incurred expenses as a result of taking time off work to work on this motion.

9. I have incurred unnecessary stress in having to deal with Baker's failure to produce the documents ordered by this court. I am already experiencing stress in preparing for trial, which makes this additional stress even worse.

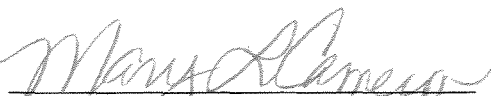
10. I had requested evidence of Baker's income and other evidence of his wealth because it is relevant to our claims for punitive damages. Baker has made claims and assertions of his alleged wealth to my husband and me in the past. I have concluded from Baker's lifestyle, actions, and his statements, that money is no object in his quest to obtain control of the property in dispute in this case. In 2008, Baker claimed to "have all the money" and threatened to take our money. At various court hearings before this court throughout the past ten months since this case was filed, Baker's attorney has indicated to this Court throughout the past ten months since this case was filed, that the Baker's are often "out of the country," "traveling," or "at their home in California." This seems to indicate that the Baker's live a leisurely lifestyle indicative of people of means.

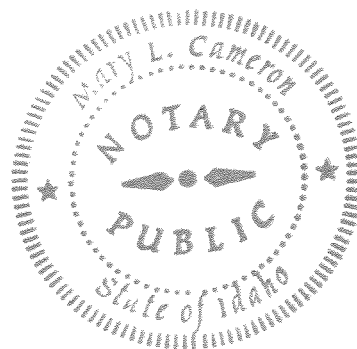
11. I believe Baker has purposefully withheld his 2007 and 2008 tax returns because those returns may indicate a substantially greater income than his 2009 returns do. I believe that Baker does not want any evidence of his wealth to be taken into consideration by this Court should the Court determine an award of punitive damages is warranted in this case.

DATED: 3-23-11

  
Terri Boyd-Davis

Subscribed and Sworn to me  
this 23<sup>rd</sup> day of March 2011

  
NOTARY PUBLIC FOR IDAHO  
Residing at: Bayview  
My Commission Expires: 8/29/2011





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REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 9: All documents as defined herein, including agreements and correspondence, between you and Mary Pandrea.

RESPONSE: See attached documents.

REQUEST FOR PRODUCTION NO. 10: All documents as defined herein, including agreements and correspondence, between you and Nellie Gilbertson.

RESPONSE: The Bakers have not entered into any agreements with Nellie Gilbertson. The Bakers do not have any correspondence with Ms. Gilbertson. Any correspondence between the Baker's counsel and Ms. Gilbertson is protected by the work product doctrine and the attorney client privilege, as the Baker's attorney is also the attorney for the Gilbertsons. The Affidavit of Nellie Gilbertson prepared by the Baker's former counsel might be responsive to this request, and has been previously produced. Ms. Gilbertson has not provided the Bakers with any other statements responsive to this interrogatory.

REQUEST FOR PRODUCTION NO. 13: All federal and state tax returns filed by you for the years 2007 through 2010.

RESPONSE: See attached. The Bakers do not have their tax returns prior to 2009, and have not yet filed a return for 2010.

EXHIBIT "J"



Need a Copy of Your Tax Return Information?

Requesting transcripts (individuals):

You have two easy and convenient options for getting copies of your federal tax return information--tax return transcripts and tax account transcripts--by phone or by mail.

Request transcripts by calling 1-800-908-9946, or order by mail using [IRS Form 4506T \(Request for Transcript of Tax Return\)](#). We do not charge a fee for transcripts. Allow two weeks for delivery.

**Definitions:**

**A tax return transcript** shows most line items from your tax return (Form 1040, 1040A or 1040EZ) as it was originally filed, including any accompanying forms and schedules. It does not reflect any changes you, your representative or the IRS made after the return was filed. In many cases, a return transcript will meet the requirements of lending institutions such as those offering mortgages and for applying for student loans.

**A tax account transcript** shows any later adjustments either you or the IRS made after the tax return was filed. This transcript shows basic data, including marital status, type of return filed, adjusted gross income and taxable income.

*Page Last Reviewed or Updated: November 10, 2010*

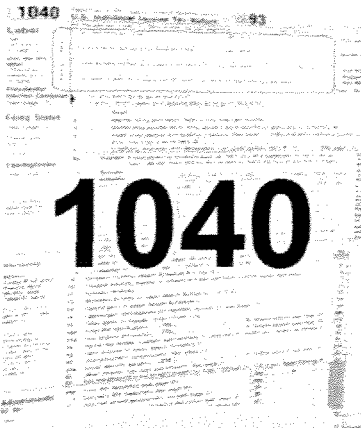
EXHIBIT "2" -p.1

0818

# FileLate™

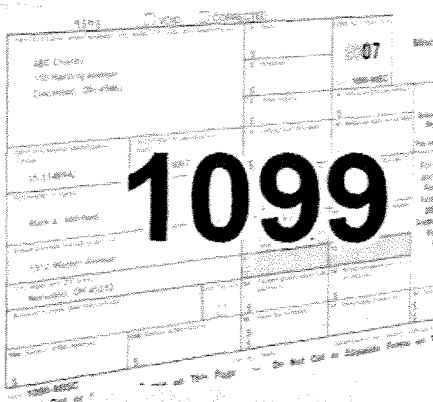
- [Home](#)
- [Late Tax Services](#)
  - [2009 Tax Return](#)
  - [2008 Tax Return](#)
  - [2007 Tax Return](#)
  - [2006 Tax Return](#)
  - [2005 Tax Return](#)
  - [2004 Tax Return](#)
  - [2003 Tax Return](#)
- [FAQ](#)
- [Pricing](#)
- [Start Now](#)
- [Log In](#)

**"Stop Searching For Tax Papers - We'll Get Them To You In 20 Minutes!"**



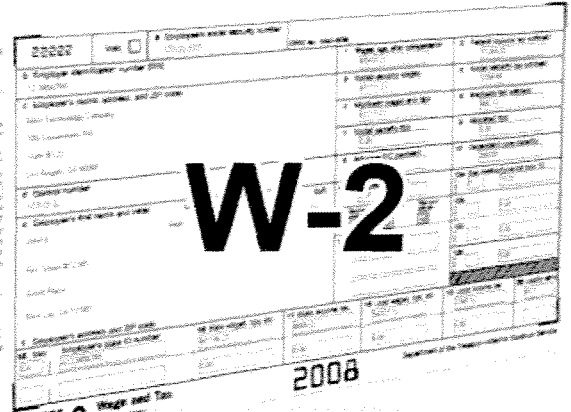
**1040**

**GET 1040**



**1099**

**GET 1099**



**W-2**

**GET W-2**

## NO WAITING

Because we know you really need your tax papers, we have employees available 24 hours a day to process your order.

That's why you will get your forms in twenty minutes, even at night or on the weekend.

## Takes 3 Easy Steps:

- ① **CHOOSE** the forms you need...
- ② **SELECT** yourself or your spouse
- ③ **SUBMIT** your order!

## ALL YOUR FORMS ARE AVAILABLE FROM 2000-2009

- Are you buying or refinancing a home?
- Going through immigration?
- Taking out a student loan (FAFSA)?

Click Get Started to retrieve your Tax

EXHIBIT "2" - p.2  
0819

**Tax and Credits****Standard Deduction for —**

• People who check any box on line 39a, 39b, or 40b or who can be claimed as a dependent, see instructions.

• All others:

Single or Married filing separately, \$5,700

Married filing jointly or Qualifying widow(er), \$11,400

Head of household, \$8,350

38	Amount from line 37 (adjusted gross income).....	38	87,954.
39a	Check <input checked="" type="checkbox"/> You were born before January 2, 1945, <input type="checkbox"/> Blind. Total boxes if: <input type="checkbox"/> Spouse was born before January 2, 1945, <input type="checkbox"/> Blind. checked ▶ 39a	1	
	b If your spouse itemizes on a separate return, or you were a dual-status alien, see instrs and ck here ▶ 39b		
40a	Itemized deductions (from Schedule A) or your standard deduction (see left margin).....	40a	63,233.
	b If you are increasing your standard deduction by certain real estate taxes, new motor vehicle taxes, or a net disaster loss, attach Schedule L and check here (see instructions) ▶ 40b		
41	Subtract line 40a from line 38.....	41	24,721.
42	Exemptions. If line 38 is \$125,100 or less and you did not provide housing to a Midwestern displaced individual, multiply \$3,650 by the number on line 6d. Otherwise, see instructions.....	42	7,300.
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-.....	43	17,421.
44	Tax (see instrs). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972.....	44	1,538.
45	Alternative minimum tax (see instructions). Attach Form 6251.....	45	0.
46	Add lines 44 and 45.....	46	1,538.
47	Foreign tax credit. Attach Form 1116 if required.....	47	53.
48	Credit for child and dependent care expenses. Attach Form 2441.....	48	
49	Education credits from Form 8863, line 29.....	49	
50	Retirement savings contributions credit. Attach Form 8880.....	50	
51	Child tax credit (see instructions).....	51	
52	Credits from Form: a <input type="checkbox"/> 8396 b <input type="checkbox"/> 8839 c <input type="checkbox"/> 5695.....	52	
53	Other crs from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/> .....	53	
54	Add lines 47 through 53. These are your total credits.....	54	53.
55	Subtract line 54 from line 46. If line 54 is more than line 46, enter -0-.....	55	1,485.
56	Self-employment tax. Attach Schedule SE.....	56	141.
57	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919.....	57	
58	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required.....	58	
59	Additional taxes: a <input type="checkbox"/> AEIC payments b <input type="checkbox"/> Household employment taxes. Attach Schedule H.....	59	
60	Add lines 55-59. This is your total tax.....	60	1,626.

**Other Taxes****Payments**

If you have a qualifying child, attach Schedule EIC.

61	Federal income tax withheld from Forms W-2 and 1099.....	61	
62	2009 estimated tax payments and amount applied from 2008 return.....	62	1,640.
63	Making work pay and government retiree credit. Attach Schedule M.....	63	
64a	Earned income credit (EIC).....	64a	
	b Nontaxable combat pay election..... ▶ 64b		
65	Additional child tax credit. Attach Form 8812.....	65	
66	Refundable education credit from Form 8863, line 16.....	66	
67	First-time homebuyer credit. Attach Form 5405.....	67	
68	Amount paid with request for extension to file (see instructions).....	68	
69	Excess social security and tier 1 RRTA tax withheld (see instructions).....	69	
70	Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> 4136 c <input type="checkbox"/> 8801 d <input type="checkbox"/> 8885.....	70	
71	Add lns 61-63, 64a, & 65-70. These are your total pmts.....	71	1,640.

**Refund**

Direct deposit? See instructions and fill in 73b, 73c, and 73d or Form 8888.

72	If line 71 is more than line 60, subtract line 60 from line 71. This is the amount you overpaid.....	72	14.
73a	Amount of line 72 you want refunded to you. If Form 8888 is attached, check here ▶ <input type="checkbox"/>	73a	0.
	b Routing number..... c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
	d Account number.....		
74	Amount of line 72 you want applied to your 2010 estimated tax.....	74	13.

**Amount You Owe**

75	Amount you owe. Subtract line 71 from line 60. For details on how to pay, see instructions.....	75	
76	Estimated tax penalty (see instructions).....	76	1.

**Third Party Designee**

Do you want to allow another person to discuss this return with the IRS (see instructions)? ☒ Yes. Complete the following. ☐ No.

Designee's name	Joseph W. Skeehan	Phone no.	626-585-9555	Personal identification number (PIN)	
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.					
Your signature.	Date	Your occupation	Daytime phone number		
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation			

**Paid Preparer's Use Only**

Preparer's signature	Joseph W. Skeehan	Date		Check if self-employed	<input type="checkbox"/>	Preparer's SSN or PTIN	
Firm's name (or yours if self-employed), address, and ZIP code	Skeehan & Company	180 S. Lake Ave. Seventh Floor		EIN		Phone no. (626) 585-9555	
Pasadena, CA 91101							

EXHIBIT "3" - p.1  
0820

**SCHEDULE A**  
(Form 1040)

**Itemized Deductions**

OMB No. 1545-0074

**2009**

Department of the Treasury  
Internal Revenue Service (99)

▶ Attach to Form 1040.

▶ See instructions for Schedule A (Form 1040).

Attachment  
Sequence No. 07

Name(s) shown on Form 1040

Your social security number

Timothy A. and Carol A. Baker

**Medical  
and  
Dental  
Expenses**

Caution. Do not include expenses reimbursed or paid by others.

1 Medical and dental expenses (see instructions) ..... Statement 2

2 Enter amount from Form 1040, line 38. .... 2 87,954.

3 Multiply line 2 by 7.5% (.075) .....

4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-

1 13,670.

3 6,597.

4 7,073.

**Taxes You  
Paid**

5 State and local (check only one box):

a ☒ Income taxes, or

b ☐ General sales taxes

6 Real estate taxes (see instructions) .....

7 New motor vehicle taxes from line 11 of the worksheet on page 2. Skip this line if you checked box 5b. ....

8 Other taxes. List type and amount ▶

9 Add lines 5 through 8. ....

5 1,404.

6 10,965.

7

8

9 12,369.

**Interest  
You Paid**

10 Home mtg interest and points reported to you on Form 1098. .... See St. 3

11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ▶

12 Points not reported to you on Form 1098. See instrs for spcl rules .....

13 Qualified mortgage insurance premiums (see instructions) .....

14 Investment interest. Attach Form 4952 if required. (See instrs.) .....

15 Add lines 10 through 14. ....

10 42,532.

11

12

13

14

15 42,532.

Note.  
Personal  
interest  
is not  
deductible.

**Gifts to  
Charity**

If you made  
a gift and  
got a benefit  
for it, see  
instructions.

16 Gifts by cash or check. If you made any gift of \$250 or more, see instrs. .... See Statement 4

17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500. .... See Statement 5

18 Carryover from prior year .....

19 Add lines 16 through 18. ....

16 834.

17 425.

18

19 1,259.

**Casualty and  
Theft Losses**

20 Casualty or theft loss(es). Attach Form 4684. (See instructions.) .....

**Job Expenses  
and Certain  
Miscellaneous  
Deductions**

21 Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ▶

22 Tax preparation fees .....

23 Other expenses — investment, safe deposit box, etc. List type and amount ▶

24 Add lines 21 through 23. ....

25 Enter amount from Form 1040, line 38. .... 25 87,954.

26 Multiply line 25 by 2% (.02) .....

27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0- .....

28 Other — from list in the instructions. List type and amount ▶

21

22 1,205.

23

24 1,205.

25

26 1,759.

27

28 0.

**Other  
Miscellaneous  
Deductions**

**Total  
Itemized  
Deductions**

29 Is Form 1040, line 38, over \$166,800 (over \$83,400 if married filing separately)?

☒ No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40a.

☐ Yes. Your deduction may be limited. See instructions for the amount to enter.

30 If you elect to itemize deductions even though they are less than your standard deduction, check here ▶ ☐

29 63,233.

EXHIBIT 13 - p. 2

From: Terri Boyd-Davis <terri@macomberlaw.com>  
Subject: **FW: Boyd-Davis v. Pandrea: Baker's Incomplete Discovery Responses**  
Date: March 15, 2011 2:55:55 PM PDT  
To: Terri Boyd-Davis' <papaterri@mac.com>

*Terri Boyd-Davis*  
Paralegal  
Macomber Law, PLLC

**From:** Toby McLaughlin [<mailto:Toby@sandpointlaw.com>]  
**Sent:** Tuesday, March 15, 2011 2:52 PM  
**To:** Terri Boyd-Davis  
**Cc:** Stephanie Allen  
**Subject:** RE: Boyd-Davis v. Pandrea: Baker's Incomplete Discovery Responses

Terri,

The Bakers simply do not have copies of their tax returns before last year. They are not required to make a demand upon a third party provider to satisfy your demands. They are required to turn over what they have, and they have done so. If you want something from a third party, then by all means send them a subpoena. Nevertheless, in an attempt to avoid wasting yet more money, I will see if they can get copies, but I am not promising anything at this point.

Toby McLaughlin  
Attorney at Law  
Berg & McLaughlin, Chd.  
414 Church St., Ste. 203  
Sandpoint, ID 83864  
Phone: (208)263-4748  
Fax: (208)263-7557

**From:** Terri Boyd-Davis [<mailto:terri@macomberlaw.com>]  
**Sent:** Tuesday, March 15, 2011 12:35 PM  
**To:** Toby McLaughlin  
**Cc:** Stephanie Allen  
**Subject:** Boyd-Davis v. Pandrea: Baker's Incomplete Discovery Responses

Dear Toby:

When I reviewed the supplemental discovery responses provided by your client that you served on me last Friday, I noted that the responses were incomplete. Specifically, your client failed to provide me with copies of his 2007 and 2008 tax returns. While I understand that his 2010 returns are unavailable because they have not yet been completed, there is no excuse to not provide me with the other returns as the court ordered he do by March 11, 2011. In fact, he did not even give any reason for not providing them other than he doesn't have them.

I note that your client's tax returns are prepared by a professional. He can undoubtedly obtain copies of the 2007 and 2008 returns by requesting them from his tax preparer. Additionally, there are other means of obtaining tax returns in a quick manner. Below I provide links to two different companies that can obtain copies of returns in the same day. One company claims to be able to provide them in less than 20 minutes.

<http://www.filestate.com/missing-forms>  
[http://creditechnologies.com/4506\\_Lender.asp](http://creditechnologies.com/4506_Lender.asp)

Please inform your client that should he not provide me with copies of his tax returns, as he was ordered to do by Judge Verby, by this Thursday, March 17, I will be bringing a motion for sanctions.

Thanks,

*Terri Boyd-Davis*  
Senior Paralegal  
**Macomber Law, PLLC**  
408 East Sherman Avenue, Suite 215  
Coeur d'Alene, Idaho 83814  
Telephone: (208) 664-4700  
Facsimile: (208) 664-9933  
[terri@macomberlaw.com](mailto:terri@macomberlaw.com)


EXHIBIT "4"  
0822

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24<sup>th</sup> day of March, 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

### AFFIDAVIT OF TERRI BOYD-DAVIS IN SUPPORT OF HER MOTION FOR SANCTIONS AGAINST DEFENDANT TIMOTHY BAKER FOR FAILURE TO COMPLY WITH DISCOVERY ORDER

Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile: 208-263-7557
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Defendant</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
Brian Davis

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAR 24 P 3: 29

MARIE SCOTT  
CLERK DISTRICT COURT

*MS*  
DEPUTY

8  
9 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
10 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

11 TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
12 husband and wife; and JEAN L. COLEMAN, an individual,  
13 NO. CV 2010-00703

14 Plaintiffs,

15 vs.

16 MARY PANDREA, an individual; TIMOTHY  
17 BAKER and CAROL BAKER, husband and  
18 wife; JAMES GILBERTSON and NELLIE  
19 GILBERTSON, husband and wife; JOHN  
20 PANDREA, an individual; and DOES 1-50,  
21 inclusive,

22 Defendants.

AFFIDAVIT OF TOBY McLAUGHLIN  
SUPPORTING DEFENDANTS'  
RESPONSE TO PLAINTIFFS' MOTION IN  
LIMINE

23 STATE OF IDAHO )  
24 ) ss.  
25 County of BONNER )

1. I, Toby McLaughlin, being duly sworn on oath deposes and states that I am over the age of 18 years and the attorney for the Defendants Baker.

2. The Plaintiffs in the above referenced matter have never asked to depose Tim Kastning, Dan Hunt, or Mary Pandrea.

AFFIDAVIT OF TOBY McLAUGHLIN  
SUPPORTING DEFENDANTS' RESPONSE TO  
PLAINTIFFS' MOTION IN LIMINE - 1

0824



1           3.     The Plaintiffs have already deposed Nellie Gilbertson, but have not asked for any  
2 further discovery regarding Ms. Gilbertson's expert opinions since the timely disclosure of Ms.  
3 Gilbertson as an expert witness.

4           4.     The Plaintiffs expert witness disclosure was made exactly 90 days before trial,  
5 leaving only 30 days in which to find rebuttal witnesses, have then inspect the subject property,  
6 and have then draft a report.

7           5.     Mr. Kastning was unable to complete his report within the 30 days after the  
8 submittal of the Plaintiff's expert witness report, on account of the snow which made it difficult  
9 for Mr. Kastning to view the area where the alleged timber trespass had occurred.

10          6.     Mr. Kastning was able to inspect the subject property on February 17, 2011.

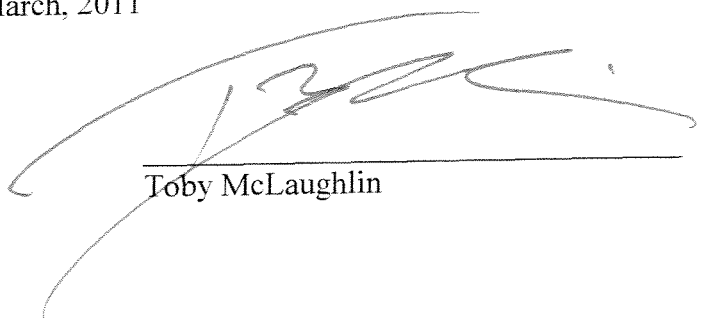
11          7.     I received his report on or about March 1, 2011, at which time I promptly  
12 supplemented our expert witness disclosures.

13          8.     Also on March 1, 2011, I sent an email to Plaintiff Terri Boyd-Davis indicating  
14 that Mr. Kastning was available for a deposition.

15          9.     A true and correct copy of the email is attached here as *Exhibit A*.

16          10.    The Plaintiffs did not respond to the offer to have Kastning available for a  
17 deposition.

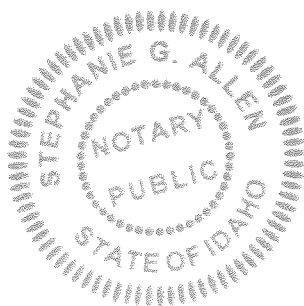
18  
19           DATED this 24<sup>th</sup> day of March, 2011

20  
21   
22 \_\_\_\_\_  
23 Toby McLaughlin  
24  
25

1 STATE OF IDAHO )  
2 ) :ss  
3 County of BONNER )

4 On this 24<sup>th</sup> day of March, 2011, before me, the undersigned Notary Public for the State  
5 of Idaho, personally appeared Toby McLaughlin, known or identified to me to be the person that  
6 executed the foregoing instrument and acknowledged to me that he executed the same.

7 SUBSCRIBED and SWORN to before me as of the day and year in this certificate first  
8 above written.



Stephanie G. Allen

Notary Public for Idaho


Residing at Sandpoint

Commission expires: 7/31/2012

## CERTIFICATE OF SERVICE

On March 24, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> Other <u>EMAIL</u>
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
John Pandrea P.O. Box 1052 Mountain View, HI 96721 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other

  
Stephanie G. Allen

**From:** Toby McLaughlin  
**Sent:** Wednesday, March 02, 2011 10:56 AM  
**To:** 'Terri Boyd-Davis'; Terri Boyd-Davis (papaterri@mac.com)  
**Cc:** Stephanie Allen  
**Subject:** RE: Boyd-Davis v. Pandrea: Bakers' depositions

I have no problem with that Terri. The responses are due on the 11th. I need to check with Tim and Carol, but can we tentatively schedule for the 14th? I have depositions tentatively scheduled in another case on the 15, 16 and 17th, but those are flexible.

Additionally, I would like to make Tim Kasting, our rebuttal expert re: the timber trespass issues available to you to depose if you wish. If so, please let me know when you would like to do so.

Toby McLaughlin  
Attorney at Law  
Berg & McLaughlin, Chtd.  
414 Church St., Ste. 203  
Sandpoint, ID 83864  
Phone: (208)263-4748  
Fax: (208)263-7557

**From:** Terri Boyd-Davis [mailto:terri@macomberlaw.com]  
**Sent:** Tuesday, March 01, 2011 10:12 AM  
**To:** Toby McLaughlin  
**Cc:** Stephanie Allen  
**Subject:** Boyd-Davis v. Pandrea: Bakers' depositions

Dear Toby:

Please let me know if you would be willing to stipulate to extending the deposition cutoff date of March 7. I would like to put off taking the Bakers' depositions until after I have had a chance to review the discovery that was the subject of last week's motion to compel. Please let me know.

Thanks,

*Terri Boyd-Davis*  
*Senior Paralegal*  
**Macomber Law, PLLC**  
408 East Sherman Avenue, Suite 215  
Coeur d'Alene, Idaho 83814  
Telephone: (208) 664-4700  
Facsimile: (208) 664-9933  
[terri@macomberlaw.com](mailto:terri@macomberlaw.com)



2011 MAR 24 P 3: 29

MARIE L. ...  
CLERK DISTRICT COURT

DEPUTY

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Baker*

8 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

10 TERRI BOYD-DAVIS and BRIAN F. DAVIS, NO. CV 2010-00703  
11 husband and wife; and JEAN L. COLEMAN, an  
12 individual,

13 Plaintiffs,

14 vs.

15 DEFENDANTS' RESPONSE TO  
16 PLAINTIFF'S MOTION IN LIMINE

17 MARY PANDREA, an individual; TIMOTHY  
18 BAKER and CAROL BAKER, husband and  
19 wife; JAMES GILBERTSON and NELLIE  
20 GILBERTSON, husband and wife; JOHN  
21 PANDREA, an individual; and DOES 1-50,  
22 inclusive,

23 Defendants.

24 COMES NOW, Defendants Timothy Baker and Carol Baker, through their counsel of record,  
25 Toby McLaughlin of the law firm Berg & McLaughlin, Chtd., and hereby responds to Plaintiff's  
Motion In Limine to exclude expert testimony.

26 **I. SUMMARY OF ARGUMENT**

27 Defendants Baker respectfully submit that the Plaintiffs' Motion to disqualify expert  
28 witnesses be denied. Although the expert witness disclosure was supplemented beyond the time  
29 set forth in the scheduling order, the Defendants had good cause to do so, and acted with due  
30 diligence in notifying the Plaintiffs of their expert witnesses and the opinions about which they

1 will testify. More importantly, the Plaintiffs have suffered no prejudice, as they have never  
2 sought to depose these experts, even when presented with the opportunity to do so.

## 3 **II. STATEMENT OF FACTS**

### 4 **A. Plaintiff's Disclosures of Expert Witnesses**

5 The Court's Pre-Trial Order was filed September 24, 2010. The Plaintiff Terry Boyd-Davis  
6 disclosed her expert witnesses December 28, 2010 (90 days before trial). The court ordered all  
7 the parties to sign the disclosure. The expert witness disclosure was signed by the Plaintiffs on  
8 February 11, 2011 (45 days before trial).

### 9 **B. Defendant's Disclosures of Expert Witnesses**

10 The Defendant filed expert disclosures listing David Evans, Dan Hunt, Tim Kastning, Mary  
11 Pandrea and Nellie Gilbertson on January 26, 2011 (approximately 62 days before trial). Due to  
12 snow conditions and the holidays, Tim Kastning was not able to view the property until February  
13 17, 2011. Upon viewing the property and completing his report, the Defendants filed an amended  
14 expert witness disclosure on March 1, 2011. Mr. McLaughlin made Mr. Kastning available for  
15 depositions beyond the deposition deadline to allow Mrs. Boyd-Davis the opportunity to depose  
16 Mr. Kastning. Mary Pandrea and Nellie Gilbertson were previous Defendants in this lawsuit.

## 17 **III. LEGAL STANDARD**

18 The Idaho Rules of Civil Procedure govern the disclosure of expert witness information.  
19  
20 IRCP 26. A trial court's determination of whether I.R.C.P. 26(e) has been violated and its  
21 imposition of sanctions for violations are matters within its discretion. Perry v. Magic Valley  
22 Reg'l Med. Ctr., 134 Idaho 46, 53, 995 P.2d 816, 823 (2000)(internal citations omitted.)  
23 However, completely precluding use of an expert witness is an extreme sanction. United States  
24  
25

1 v. W.R. Grace, 493 F.3d 1119, 1132 (9th Cir. 2007) on reh'g en banc, 526 F.3d 499 (9th Cir.  
2 2008).

3  
4 There is a duty to supplement responses under IRCP 26(e). Although the work "seasonably"  
5 has not been defined, the Idaho Supreme Court has stated:

6 [A]n important inquiry in determining whether a response was  
7 given 'seasonably' is: was the opposing party given an opportunity  
8 for full cross examination? If 'yes,' then there probably would be  
no abuse of discretion in admitting the testimony.

9 Edmunds v. Kraner, 142 Idaho 867, 875, 136 P.3d 338, 346 (2006).

10 A trial court's decision will be overturned only when there is an abuse of discretion. *See*  
11 Artiach Trucking, Inc. v. Wolters, 118 Idaho 656, 659, 798 P.2d 938, 941 (1990).

#### 12 IV. ARGUMENT

##### 13 A. Defendants' Experts Were Disclosed To Plaintiffs

14 The Defendants disclosed the identity of their experts along with all of the information in  
15 their possession at the time of disclosure, January 26, 2011, which was within the discovery  
16 deadline for the disclosure of expert witnesses. *See Affidavit of Terri Boyd-Davis In Support of*  
17 *Plaintiff Terri Boyd-Davis' Motion In Limine Re Exclusion of Testimony of Defendants'*  
18 *Designated Expert Witnesses* ("Affidavit of Boyd-Davis"), Exhibit "1".

19 Dan Hunt:

20  
21 a. Statement of expert opinions: Mr. Hunt will testify regarding the chain of  
22 title for the parcels of real estate at issue in this case. According to the  
23 public records, the Bakers are the titled owner of the Disputed Property.  
24 Mr. Hunt will also testify that there is no deeded easement across the road  
25 leading into the Coleman Property.

1 Tim Kastning:

2 a. Statement of expert opinions: Mr. Kastning will testify as to the value of  
3 the alleged timber damage and in rebuttal to the estimate by Peregrine  
4 Tree Service.

5 Mary Pandrea:

6 4. Mary Pandrea, Certified Master Gardener  
7 a. Statement of expert opinions: Ms Pandrea will testify as to the extent of  
8 the timber damage and the aesthetic value of the vegetation which was  
9 allegedly damaged. It is Ms. Pandrea's opinion that the value of the  
10 alleged timber trespass is negligible.

11 Nellie Gilbertson:

12 5. Nellie Gilbertson, Certified Master Gardener  
13 a. Statement of expert opinions: Mrs. Gilbertson will testify as to the extent  
14 of the timber damage and the aesthetic value of the vegetation which was  
15 allegedly damaged. It is Mrs. Gilbertson's opinion that the value of the  
16 alleged timber trespass is negligible.

17 **B. Defendants Seasonably Supplemented Their Disclosures**

18 Pursuant to IRCP 26(e), the Defendants have a duty to supplement their disclosures.  
19 Defendants did precisely this on March 1, 2011, by providing the Defendants' Amended Expert  
20 Witness Disclosures. (*Boyd-Davis Aff.*, Ex 2). The Amended Expert Witness Disclosures  
21 included a report by Tim Kastning which rebutted the estimate of value by Plaintiff's Expert  
22 Witness in regards to the timber damage. *Id.* This is exactly what the Defendants' disclosures  
23 stated Mr. Kastning was going to do. (*Boyd-Davis Aff.*, Ex 1). The report merely supplemented  
24 the previous disclosure, by providing the detailed basis of Mr. Kastning's opinions.

25 The report by Mr. Kastning is 10 pages excluding exhibits. The majority of the exhibits are  
pictures of the property provided by Plaintiff's expert, Mr. Kastning, Mary Pandrea, or the  
Plaintiff.



1  
2 **C. The Plaintiffs have Not Suffered any Prejudice as they have Ample Opportunity to**  
3 **Prepare for Cross-Examination of the Witnesses.**

4 Defendant's attorney, Toby McLaughlin, contacted Mrs. Boyd-Davis and offered to make  
5 Mr. Kastning available even after the discovery deadline had lapsed. (*McLaughlin Aff.*, ¶¶ 4-9,  
6 Ex. A). This was done for the primary purpose of minimizing any prejudice to the Plaintiffs. At  
7 no time did the Plaintiffs contact Defendants requesting to depose their expert witnesses.  
8 (*McLaughlin Aff.*, ¶¶ 3, 10). The Plaintiffs have waited until the eve of trial to allege any harm to  
9 her and taken no action to minimize any possible impact.

10 Throughout Plaintiffs' briefing and motion to exclude, the Plaintiffs have only alleged  
11 prejudice in a conclusory manner. This is because the Plaintiffs have suffered no prejudice. The  
12 Plaintiffs received the Defendants rebuttal expert witness disclosure in a timely manner. Experts  
13 Mary Pandrea, Nellie Gilbertson and Tim Kastning are testifying to the timber trespass alleged in  
14 the Plaintiff's complaint. Mary Pandrea and Nellie Gilbertson were previous parties to this  
15 litigation. The knowledge of these parties and their involvement in this case has been well-  
16 documented and was not a surprise to the Plaintiffs.

17 Plaintiffs cite to a number of easily distinguishable cases in support of their motion. For  
18 instance, Plaintiffs point to Radmer v. Ford, 120 Idaho 86, 813 P.2d 897 (1991) In which a report  
19 by an accident reconstructionist was not disclosed until the day of trial. The report significantly  
20 affected the Plaintiff's theory of liability. On appeal, the Idaho Supreme Court found that the  
21 failure to disclose was a violation of the party's duty to supplement discovery and therefore Ford  
22 Motor Company was substantially prejudiced. Radmer v. Ford Motor Co., 120 Idaho 86, 91, 813  
23 P.2d 897, 902 (1991)("[A]s a result Ford was unprepared to meet and effectively challenge  
24 Radmer's new theory of liability and was prejudiced thereby.")  
25

1 Plaintiff also cites Clark v. Klein, 137 Idaho 154, 45 P.3d 810 (2002) for the proposition that  
2 the Defendant's experts should be excluded. That case is also dramatically different than the  
3 instant situation. In the Clark case, the party failed to provide any substantial expert witness  
4 disclosure during the two years of litigation. At trial, the expert testified as to an entirely new  
5 theory of the case. In addition, the opposing party's expert has already been excused. In that  
6 case, the Supreme Court found substantial prejudice.

7  
8 In the long line of cases cited by the Plaintiff, the facts are similar. Prejudice to a party occurs  
9 where an expert testifies to a new theory of the case on or near the trial date. *See* Similarly the  
10 Holiday Inns, Inc. v. Robertshaw Controls Co., 560 F.2d 856 (7th Cir.1977) (Expert witness  
11 property excluded where disclosure made on the eve of trial). The disclosure in this case was  
12 well in advance of trial, and the Plaintiffs could have deposed the experts if they had chosen to.

13 Moreover, the Defendants' experts to which the Plaintiffs object are rebuttal experts. The  
14 Plaintiff took no steps to investigate the experts through discovery, deposition or otherwise. The  
15 identities of the experts and their use as rebuttal witnesses was disclosed. Defendants were under  
16 an obligation to continue disclosing expert information pursuant to IRCP 26(e). Plaintiff has  
17 stated only that the amended witness disclosure is a "disadvantage" but hasn't provided any  
18 proof as to the prejudice.

19 **D. Good Cause Exists as to Why the Expert Reports of Kastning was not Provided with**  
20 **First Expert Witness Disclosure.**

21 Tim Kastning, Nellie Gilbertson and Mary Pandrea are rebuttal experts to Mr. Del Carlo. Mr.  
22 Del Carlo was first disclosed to the Defendants on December 28, 2010. The Defendants had 30  
23 days then to respond to the assertions made by Mr. Del Carlo. Due to the weather and the  
24 holidays, this was not feasible.  
25

1 Mr. Kastning visited the site on February 17, 2011 and subsequently issued his report. The  
2 report was then disclosed to Mrs. Boyd-Davis on March 1, 2011. The delay in supplementing the  
3 expert witness disclosure was due to weather conditions, not to any delay on the part of the  
4 witness or the Defendants. Consequently, good cause is present as to why the report was  
5 presented as a supplementation, rather than with the original expert witness disclosure.

6 **E. Credibility Is an Issue of Fact that Goes to To The Trier of Fact**

7 Finally, Mrs. Boyd-Davis states that Mary Pandrea and Nellie Gilbertson should be excluded  
8 due to their bias as prior defendants in this case. The Idaho Rules of Evidence state that the trier  
9 of fact is to be the sole arbiter of the credibility of a witness. I.C. § 9-201. Some witnesses may  
10 be excluded by I.C. § 9-202. However, the provision does not apply to Mary Pandrea and Nellie  
11 Gilbertson.  
12

13 Mrs. Boyd-Davis argues for the exclusion of Plaintiff's witnesses without citing to any  
14 authority in law. The credibility of these witnesses is properly a matter to be determined by the  
15 court and should not be decided by a motion in limine.  
16

17 **V. CONCLUSION**

18 The Defendants disclosed the identity of their experts within the scheduling deadlines of the  
19 Court's order. The Defendants seasonably supplemented those disclosures by providing a copy  
20 of Tim Kastning's report as soon as it was received. The delay in the receipt of the report was  
21 due to whether conditions, as Mr. Kastning needed to inspect the property in February in order to  
22 prepare his rebuttal expert witness report.  
23

24 The Plaintiffs were not prejudiced in any manner by the disclosure of the Plaintiffs' experts.  
25 The Plaintiffs took no efforts to depose or investigate Defendants experts. Consequently,

1 Defendant's expert witnesses should be permitted to testify at trial. Defendants respectfully  
2 request that the court deny the Plaintiff's Motion In Limine.

3  
4 DATED this 24<sup>th</sup> day of March, 2011.

5 BERG & McLAUGHLIN

6  
7 By: 

8 TOBY McLAUGHLIN

9 Attorneys for Defendants Baker

10  
11  
12 **CERTIFICATE OF SERVICE**

13 On March 24, 2011, I caused copies of the foregoing document to be served by the  
14 following methods on the parties listed below as follows, which is the last known address for the  
15 listed party:

16 Terri Boyd-Davis  
17 Brian F. Davis  
18 Jean L. Coleman  
12738 N. Strahorn Rd.  
Hayden, ID 83835

☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☒ Other EMAIL

19 *Pro Se Plaintiff*

20 Brian Davis  
12738 N. Strahorn Road  
Hayden, ID 83835

☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☐ Other \_\_\_\_\_

22 *Pro Se Plaintiff*


23 Jean Coleman  
12738 N. Strahorn Road  
Hayden, ID 83835

☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☐ Other \_\_\_\_\_

25 *Pro Se Plaintiff*

1 John Pandrea  
2 P.O. Box 1052  
3 Mountain View, HI 96721  
4

☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission  
☐ Other \_\_\_\_\_

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STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 APR 28 P 4:32

MARIE SCOTT  
CLERK DISTRICT COURT  
*ap*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

**TERRI BOYD-DAVIS and BRIAN F. DAVIS,** )  
**husband and wife; and JEAN L. COLEMAN,** )  
**an individual,** )

**Plaintiffs,** )

**vs.** )

**MARY PANDREA, an individual; TIMOTHY** )  
**BAKER and CAROL BAKER, husband and** )  
**wife; JAMES GILBERTSON and NELLIE** )  
**GILBERTSON, husband and wife; JOHN** )  
**PANDREA, an individual; and DOES 1-50,** )  
**inclusive,** )

**Defendants.** )

**CASE NO. CV-2010-0000703**

**ORDER DETERMINING LIABILITY**  
**AND ORDER FOR REMOVAL OF**  
**CHAIN LINK FENCE**

**TIMOTHY BAKER and CAROL BAKER,** )  
**husband and wife; and JAMES GILBERTSON** )  
**and NELLIE GILBERTSON, husband and wife,** )

**Counterclaimants,** )

**vs.** )

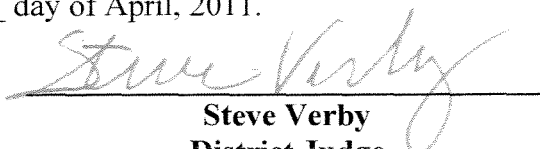
**TERRI BOYD-DAVIS and BRIAN F. DAVIS,** )  
**husband and wife; and JEAN L. COLEMAN,** )  
**an individual,** )

**Counterdefendants.** )

Based upon the findings of fact and conclusions of law set forth on the record on April 28, 2011, IT IS HEREBY ORDERED that:

1. Title to the disputed parcel of real property involved in this lawsuit is quieted in the plaintiffs; and
2. The defendants are ordered to remove the chain link fence which was placed on the plaintiffs' real property expeditiously, but no later than July 3, 2011. In removing the fence, care must be taken by the defendants and/or their agents to minimize any damage to the plaintiffs' real property.

DATED this 28<sup>th</sup> day of April, 2011.

  
\_\_\_\_\_  
**Steve Verby**  
**District Judge**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid,  
this 4 day of ~~April~~ *May*, 2011, to:

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, Idaho 83835

Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, Idaho 83835

Jean L. Coleman  
12738 N. Strahorn Rd.  
Hayden, Idaho 83835

D. Toby McLaughlin  
BERG & MCLAUGHLIN, CHTD.  
414 Church Street, Ste. 203  
Sandpoint, Idaho 83864

*A. Phillips*  
Deputy Clerk



CLERK OF DISTRICT COURT  
COUNTY OF BONNER  
DISTRICT COURT  
2010-6 P 240  
MARIE SCOTT  
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN,  
an individual,

Plaintiffs,

vs.

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

CASE NO. CV-2010-0000703

\*\*AMENDED\*\*

ORDER DETERMINING LIABILITY  
AND ORDER FOR REMOVAL OF  
CHAIN LINK FENCE

TIMOTHY BAKER and CAROL BAKER,  
husband and wife; and JAMES GILBERTSON  
and NELLIE GILBERTSON, husband and wife,

Counterclaimants,

vs.

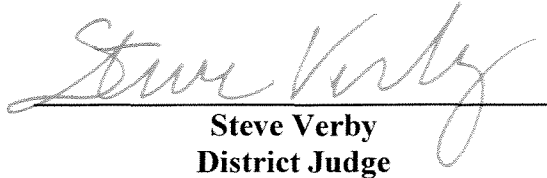
TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN,  
an individual,

Counterdefendants.

Based upon the findings of fact and conclusions of law set forth on the record on April 28, 2011, IT IS HEREBY ORDERED that:

1. Title to the disputed parcel of real property involved in this lawsuit is quieted in the plaintiffs; and
2. The defendants are ordered to remove the chain link fence which was placed on the plaintiffs' real property expeditiously, but no later than **Friday, June 3, 2011**. In removing the fence, care must be taken by the defendants and/or their agents to minimize any damage to the plaintiffs' real property.

DATED this 6<sup>th</sup> day of May, 2011.

  
\_\_\_\_\_  
**Steve Verby**  
**District Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid,  
this 11 day of May, 2011, to:


Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, Idaho 83835

cc Hand delivered to  
Mary Panchera 5/10/11 to

Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, Idaho 83835

Jean L. Coleman  
12738 N. Strahorn Rd.  
Hayden, Idaho 83835

D. Toby McLaughlin  
BERG & MCLAUGHLIN, CHTD.  
414 Church Street, Ste. 203  
Sandpoint, Idaho 83864

  
Deputy Clerk

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Gilbertson and Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAY 12 P 4:53

MARIE SCOTT  
CLERK DISTRICT COURT

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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN, an  
individual,

Plaintiffs,

vs.

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

NO. CV 2010-00703

DEFENDANTS' MOTION FOR  
RECONSIDERATION OF TRIAL  
DECISION AND MOTION FOR  
CLARIFICATION

COMES NOW, Defendants TIMOTHY and CAROL BAKER, husband and wife, and  
JAMES GILBERTSON and NELLIE GILBERTSON, husband and wife, by and through their  
attorney of record, Toby McLaughlin of Berg & McLaughlin, Attorneys at Law, and moves the  
court for reconsideration of its Trial Decision, which was announced on the record in open court  
on April 28, 2011, although no written decision has been filed to date.

This Motion is supported by the Memorandum filed herewith, as well as the records and  
files herein.

DATED this 12<sup>TH</sup> day of December, 2010.

BERG & McLAUGHLIN, CHTD.

By: 

TOBY McLAUGHLIN

Attorneys for Defendants/Counterclaimants Baker

**CERTIFICATE OF SERVICE**

On May 12<sup>th</sup>, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input checked="" type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
John Pandrea P.O. Box 1052 Mountain View, HI 96721 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other



Toby McLaughlin

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Gilbertson and Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 MAY 12 P 4:53

MARIE SCOTT  
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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN, an  
individual,

Plaintiffs,

vs.

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

NO. CV 2010-00703

MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
RECONSIDERATION OF TRIAL  
DECISION AND MOTION FOR  
CLARIFICATION.

I. SUMMARY OF ARGUMENT

The Defendants Tim and Carol Baker respectfully request that the Court reconsider its Trial decision, on the grounds that the Court's findings of fact and conclusions of law directly conflict with one another, and the Court's decision is irreconcilable with the Court's findings of fact. The Court quieted title in Defendants for that area of the Plaintiff's deeded property which lies North of the fence line. In doing so, the Court found that the original grantor, Harry Clark, "intended to convey all of the area North of the fence."

This finding, however, is irreconcilable with the Court's finding that the fence was built by the Defendants' predecessor in interest, Clifford Johnson. In its verbal opinion, the Court found repeatedly that it was Cliff Johnson who constructed the fence in 1971. (Audio Recording of Trial Court Opinion on April 28, 2011, at 2:13 p.m.). Yet, Coleman acquired her two parcels

1 in 1966 and 1970, respectively, as demonstrated by the deeds admitted at trial. (D's Exhibits 2  
and 3). Thus, Harry Clark could not have intended that the fence mark the Southern boundary  
2 of the Coleman property, because according to the Trial Court's own findings, **the fence did not**  
3 **exist when Clark drafted the deed and conveyed the property to Coleman.**

4 The only logical way Harry Clark could have intended for the fence to mark the boundary  
line is if Harry Clark had told Cliff Johnson where he believed the Southern Boundary line  
5 existed at the time Johnson built the fence, and that Johnson followed such advice when building  
6 the fence. Yet, there was not a shred of evidence admitted at trial to support such a finding. On  
7 the contrary, Cliff Johnson presented unrefuted testimony that neither Harry Clark nor anyone  
8 else ever discussed the precise location of this boundary (Audio from March 29, 2011, 1:37  
9 p.m.), and that Cliff Johnson built the fence in the most convenient location based upon the  
topography of the land, for the sole purpose of penning his horses. (Audio from March 29, 2011,  
10 1:37 p.m.; 1:41 p.m.).

11 While it might be possible to conclude, based upon the location of the cabin, that Clark  
12 intended to convey more land than is shown on the 2007 Glahe Survey, it is, respectfully, not  
13 reasonable to find that Harry Clark intended to convey up to a fence line that had not yet been  
14 built at the time of the drafting of the deed or the conveyance of the Coleman property. The  
Plaintiffs presented the Court with no alternative, because there is quite simply no way to know  
15 precisely what Harry Clark intended. As such, the Plaintiffs' quiet title claim must fail for lack  
16 of proof.

17 The Court did not make findings of fact or conclusions of law with regard to the  
18 Plaintiffs' other claims of adverse possession or boundary by agreement. The Court never  
referenced either cause of action or made any findings that any element of either claim had been  
19 proven by clear and convincing evidence – the requisite standard of proof for both claims.  
20 Consequently, it must be inferred that the Court concluded that the Plaintiffs failed to satisfy  
21 their burden with respect to these claims.

22 Finally, the Court did not make any findings of fact or conclusions of law with respect to  
the Baker's affirmative defense of laches. The evidence at trial demonstrated that Jean Coleman  
23 was aware of the issues with respect to her legal descriptions no later than 1981. Tucker provided  
24 such notification by letter dated October 12, 1979. (D's Ex. HH). A survey was completed for  
25 Jean Coleman, as evidenced by the 1981 Tucker Survey. (D's Ex. B). Evidence was admitted



1 that Ms. Coleman was part of this process, and asked to be present during the Jean Coleman  
2 survey. (D's Ex. X; Testimony of Michael Stewart). New legal descriptions were drafted in  
3 1981 for Coleman by Tucker Engineering, which would have corrected the ambiguous deeds had  
4 Coleman taken action to remedy the problem at that time. (P's Ex. 21). Yet, Coleman chose not  
5 to address these issues until almost 30 years later, when witnesses are no longer available,  
6 evidence has been lost, and memories have faded. The loss of such evidence (particularly the  
7 Court's finding that Cliff Johnson's memory is not reliable (Audio Recording of Trial Court  
8 Opinion on April 28, 2011, at 2:22 p.m.)) has caused substantial prejudice to the Bakers.  
9 Circumstances such as these are exactly why the doctrine of laches exists, and the Bakers ask  
10 that that the Court make particularized findings of fact and conclusions of law regarding this  
11 defense.

12 For these reasons, the Defendants respectfully request that the Court reconsider its  
13 findings. Moreover, as the record now stands, it is impossible to determine the quantum of  
14 property that has been quieted in the Defendants. There is no legal description to identify the  
15 property, and the property described in Plaintiffs' Complaint, which was adopted by reference in  
16 the Court's order, is not clear. Consequently, if the Court is not inclined to reverse its decision,  
17 the Baker's request that the Court clarify its ruling.

## 18 **II. RELEVANT FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19 On May 28, 2011, the Court read its findings of fact and conclusions of law into the  
20 record. The following are the findings and conclusions relevant to this motion, as evidenced by  
21 the audio recording of the Court's findings:

- 22 1. Harry and Edith Clark conveyed a parcel of real property to their daughter,  
23 Plaintiff Jean Coleman, on October 17, 1966. (P's Ex. 2).
- 24 2. The Clarks conveyed a second parcel to Coleman on December 23, 1970. (P's Ex.  
25 3).
3. Harry Clark drafted the legal descriptions in these deeds.
4. On September 3, 1971, the Clarks conveyed a parcel of land to Clifford and Joan  
Johnson. (P's Ex. 7).
5. The Johnson parcel is contiguous and to the South of the Coleman's property.

6. Sometime in 1970 or 1971, a cabin was moved onto the Coleman property by Harry Clark and a friend.

7. Neither Coleman or Johnson knew the exact location of their boundary line.

8. Sometime in 1971, Cliff Johnson built a fence near the Northern boundary of his Northernmost parcel. (Audio Recording of Trial Court Opinion on April 28, 2011, at 2:13 p.m.; )

9. Jean Coleman testified that she walked her southern parcel of property with Harry Clark prior to its conveyance, at which time Harry Clark showed her the property boundaries.

10. Jean Coleman walked the property boundaries with Harry Clark after the fence was constructed by Cliff Johnson. (Audio Recording of Trial Court Opinion on April 28, 2011, at 2:21 p.m.)

11. The Deeds conveying the property to both Coleman and Johnson are ambiguous.

12. In conveying the property to Coleman, Harry Clark had intended to convey property up to the fence line depicted on the 2007 Glahe Survey.

### III. ANALYSIS

A. The Court's Decision is Based upon Irreconcilable Findings of Fact – Harry Clark could not have Intended to Convey Property up to a Fence that Was not Yet in Existence.

In quieting title in the Disputed Property to the Plaintiffs, the Court relied upon its finding that Harry Clark, the original grantor of both Plaintiff's and Defendant's properties, intended in 1970 to convey to Jean Coleman land up to the fence line depicted on the 2007 Glahe Survey. Yet, the Court also found that Cliff Johnson built the fence in 1971.

Respectfully, the Defendants submit that Harry Clark *could not* have intended to convey property up to a fence line that did not exist at the time of the conveyance. Unless Harry Clark had reason to know in 1970 that a fence line was going to be constructed and the location of where the fence would later be constructed, he could not have intended that the fence line demarcate the Southern boundary of the Coleman property. Moreover, the Court found that the fence line was subsequently built by Cliff Johnson, not Harry Clark, and there was not a shred of evidence presented at trial indicating that Johnson and Clark discussed the fence or its location.

1 On the contrary, Cliff Johnson presented unrefuted testimony that he never discussed the location  
2 of the Northern boundary with anyone, including Harry Clark. (Audio from March 29, 2011,  
3 1:37 p.m.). Unless Clark had the ability to see the future, he could not have intended to convey  
4 up to the fence line because he could not have known where it would be built. Thus, the finding  
5 that Harry Clark intended, by the deed executed in 1970, to convey property up to the fence line  
6 is irreconcilable with the finding that Cliff Johnson built the fence after he acquired the property  
7 in 1971.

8 The Court also based its finding that Clark intended to convey the land up to the fence  
9 upon the existence of the driveway that leads up to the cabin and the parking area which sits to  
10 the South of the Cabin. (Audio Recording of Trial Court Opinion on April 28, 2011, at 2:43  
11 p.m.). However, in 1970, when the second parcel was conveyed to Coleman, the cabin had not  
12 yet been placed on the property. Consequently, the driveway did not extend to the cabin, and  
13 there was no parking area. This is evidenced by pictures contained in P's Ex. 34, the only  
14 pictures admitted at trial which depict the property in the early 1970's. These pictures clearly  
15 show that neither the driveway nor the parking areas had yet come into existence. Thus, the  
16 Court cannot reasonably base a finding of Harry Clark's intent on these features, which did not  
17 exist at the time of the conveyance.

18 The Court gave considerable weight to its finding that Harry Clark would not have placed  
19 the cabin on the property line. Even if this were true, it lends no weight to the finding that Clark  
20 intended to convey *up to the fence line*. At most, Harry Clark may have intended what is shown  
21 in Plaintiffs' Exhibit 23 - that the boundary line lie somewhere to the South of what was  
22 ultimately found to be the surveyed boundary. Such an overlap, however, would encompass  
23 only a portion of the Disputed Property, not all of it. After all, Clark used the words "thence 225  
24  
25

1 feet West” in the deed to Coleman, giving no indication that he meant the line to be anything but  
2 true West.

3 If the Court were to conclude that the unrecorded Tucker drawing at Exhibit 23  
4 represents Harry Clark’s intent, then the Coleman property would encompass the cabin, but not  
5 all of the disputed property. This is certainly a more reasonable conclusion as it would not rely  
6 upon improvements which did not exist at the time of the conveyance, or require that the legal  
7 description be arbitrarily rotated more than 23 degrees counter-clockwise. Yet, the Plaintiffs  
8 failed to present the Court with sufficient evidence to be able to locate the corners as they are  
9 depicted in Exhibit 23. Consequently, they failed to prove their claim for quiet title.

10 **B. The Court’s Findings are Based on Testimony of Jean Coleman, which is**  
11 **Contradicted by the Evidence Admitted at Trial.**

12 The Court also placed a great deal of weight on Jean Coleman’s testimony that she  
13 walked the property with her father at which time she was shown the fence as her boundary.  
14 (Audio Recording of Trial Court Opinion on April 28, 2011, at 2:21 p.m.). Such a finding,  
15 however, is contrary to the evidence presented at trial.

16 Jean Coleman indicated that she walked the fence at the time her father conveyed the  
17 property to her, and that her father identified the fence as her boundary line at that time. (Audio  
18 of Trial on March 28, 2011, at 2:17 p.m.). Yet, Cliff Johnson did not build the fence until  
19 sometime the next year.

20 Moreover, Ms. Coleman improperly identified the fence as wood and wire, directly  
21 contradicting not only the testimony of Cliff Johnson but also the photograph of the fence  
22 presented by the Plaintiffs as Exhibit 34. Despite these inconsistencies, the Court found that  
23 Coleman must have walked the fence with her father after it was constructed by Cliff Johnson.  
24  
25

1 (Audio Recording of Trial Court Opinion on April 28, 2011, at 2:22 p.m.). This conclusion,  
2 however, is not based on evidence supported by the record.

3 In finding that Coleman must have been mistaken as to the date that she walked the  
4 property with her father, the Court relied upon Defendant's Exhibit OO, which is a picture  
5 showing the young girls and horses with a wood and wire fence in the background. The Court  
6 mistakenly concludes that the wood and wire fence in the background of Exhibit OO is the same  
7 fence shown in Exhibit 34. This is not supported by the evidence admitted at trial.

8 In fact, Cliff Johnson testified that the fence depicted in the background of Exhibit OO  
9 was located on his middle parcel of property – not the northern parcel. (Audio of Trial on March  
10 29, 2011, at 1:52 p.m.). He testified that he owned the parcel to the South first and built a fence  
11 on that parcel to keep his horses penned. Johnson was later approached by Clark, who offered to  
12 sell him "Gracie's Parcel," which Clark had intended to convey to his daughter Gracie. (*Id.*, at  
13 1:59 p.m.). This was the Northernmost parcel purchased by the Johnson's in 1970. The fence  
14 depicted in Exhibit OO, however, was located on the Southern parcel, as testified by Johnson.  
15 (*Id.* at 1:54 p.m.). This testimony was not contradicted, and there is no evidence in the record to  
16 support a finding that any part of the fence line at issue here was anything other than a split rail  
17 fence, until it was replaced by barbed wire and *metal* fence posts sometime after Bob Camp  
18 began living in the cabin.

19  
20 There would have been no reason for Coleman to walk Johnson's southern parcel with  
21 her father. Thus, her testimony that the fence she saw when she walked the property was wood  
22 and wire impeaches her own credibility, as the evidence proves that the fence at issue was split  
23 rail. This is further supported by the Bob Camp pictures, which show only a split rail fence. (P's  
24 Ex. 44).  
25

1 Additionally, Coleman's testimony that her father showed her the fence and identified it  
2 as the boundary is nothing more than self-serving hearsay. Given Jean Coleman's other  
3 inconsistencies, Plaintiffs respectfully submit that her testimony should be given little, if any,  
4 weight.

5 The weight of the evidence supports Cliff Johnson's testimony that he built the fence to  
6 keep his horses penned. (Audio of Trial on March 29, 2011, at 1:37 p.m.). He testified that he  
7 placed the fence in its location as a consequence of the gully, as he did not want to run the fence  
8 down into the gully. (*Id.*, at 1:41 p.m.). This is the same gully that is identified in the Plaintiffs'  
9 Complaint, so its existence is not disputed. This testimony is supported by the shape of the  
10 fence, which is not regular and does not match any property boundary, as well as the pictures  
11 showing that the fence was, in fact, used to contain the Johnson's horses.

12 Based upon the evidence submitted at trial, as identified herein, the Bakers respectfully  
13 request that Court reconsider its Trial Opinion.

14  
15 **C. The Finding of Stratton's Figure 6 as Depicting Harry Clark's Intent is Not**  
16 **Supported by the Evidence Submitted at Trial.**

17 In reaching its decision, the Court concluded that Robert Stratton's interpretation of the  
18 Coleman deeds as depicted on Figure 6 is consistent with the intent of Harry Clark in conveying  
19 land to Jean Coleman. (Audio Recording of Trial Court Opinion on April 28, 2011, at 2:52 p.m.).  
20 The Baker's submit that this conclusion is contradicted by the evidence presented at trial.

21 The Court's conclusion that Stratton's Figure 6 is the most reasonable interpretation of  
22 Harry Clark's intent relies heavily upon the Court's assumption that the call to the point of  
23 beginning in the Coleman Deeds resulted in a point which was North of the old Pack River Road.  
24 (*Id.*, at 2:37 p.m.). Yet, the only evidence submitted to support this finding are the surveys, the  
25 earliest of which was recorded in 1979. Coleman's first Deed, however, was executed in 1966,

1 more than a decade before the first recorded survey. The old pack river road no longer exists in  
2 this location, as it was replaced and moved South in 1980. It is impossible, therefore, to  
3 conclude Coleman deeds calls to a point of beginning lying North of the old road, because there  
4 is no evidence in the record as to the location of that road in 1966, or even in 1970. It is certainly  
5 possible that in 1966, when Harry Clark drafted the deeds, the edge of the road was exactly  
6 where he called the point of true beginning, and there is nothing in the record to contradict this  
7 conclusion.

8 In any case, the call to the road will only trump the distance call if we know, with a  
9 reasonable degree of certainty, the location of the old pack river road in 1966. The Plaintiffs'  
10 expert witness, Robert Stratton, testified that when interpreting conflicting calls in a deed you  
11 must identify the location of the call as of the date the legal description was drafted. (Audio of  
12 Trial on March 28, 2011, at 11:49 p.m.). Furthermore, if there is evidence that a called  
13 monument has moved, you would hold the distance call. (*Id.*, 11:50 p.m.). You must be certain  
14 of the location of the called item in order to hold it over a distance call. (*Id.*).

15 Mary Pandrea testified that the old Pack River Road was merely an old dirt road, which  
16 was very muddy and had washed out during this time period. Even Stratton admitted that by  
17 1979, the road likely moved from its location in 1966. Consequently, there is insufficient  
18 evidence in the record to support the Court's conclusion that the point of beginning identified in  
19 the Coleman Deeds was to a point North of the edge of the Pack River Road, as it existed in  
20 1966.

21 Moreover, to accept Stratton's Figure 6 as a depiction of Harry Clark's intent, the Court  
22 must conclude the following: (1) that Clark intended to land lock his own property to the South;  
23 (2) that Clark intended to have the property reach Pack River, despite a lack of any call to that  
24  
25

1 easily identifiable object; (3) that Clark intended that the fence mark the Southern boundary of  
2 the property, even though it did not exist at the time of the conveyance; and (4) that Clark  
3 intended that the Southern boundary be rotated more than 23 degrees counter-clockwise, even  
4 though the deed calls simply to "225 feet East." Plaintiffs submit that such a conclusion is not  
5 supported by the evidence, and requests that the Court reconsider its decision.  
6

7 **D. The Plaintiffs' Claims are Barred by the Doctrine of Laches.**

8 The Bakers asserted a defense of laches in their Amended Answer, and argued this  
9 defense at trial. The Court, however, did not make any findings of fact or conclusions of law  
10 with respect to this affirmative defense. The Bakers request that the Court consider the defense  
11 in reconsidering its opinion.  
12

13 The evidence at trial demonstrated that Jean Coleman was aware of the issues with  
14 respect to her legal descriptions no later than 1981. Tucker Engineering provided such  
15 notification by letter dated October 12, 1979. (D's Ex. HH). A survey was completed for Jean  
16 Coleman, as evidenced by the 1981 Tucker Survey. (D's Ex. B). Evidence was admitted that  
17 Ms. Coleman was part of this process, and asked to be present during the Jean Coleman survey.  
18 (D's Ex. X; Testimony of Michael Stewart). New legal descriptions were drafted in 1981 for  
19 Coleman by Tucker Engineering, which directly addressed the ambiguities in the deeds. (P's Ex.  
20 21).

21 Yet, Coleman chose not to address these issues until almost 30 years later, when  
22 witnesses are no longer available, evidence is lost, and memories have faded. The loss of such  
23 evidence (particularly the Court's finding that Cliff Johnson's memory is not reliable (Audio  
24  
25



1 Recording of Trial Court Opinion on April 28, 2011, at 2:22 p.m.)) has caused substantial  
2 prejudice to the Bakers.

3 Circumstances such as these are exactly why the doctrine of laches exists, and the Bakers  
4 ask that the Court make particularized findings of fact and conclusions of law regarding this  
5 defense.

6 **E. The Court's Ruling Leaves Neither Party with Clear Title.**

7 As the record now stands, the Court has quieted title in the Plaintiffs to "the disputed  
8 parcel of real property involved in this lawsuit." This is extremely problematic. The Plaintiffs  
9 Complaint does not contain a legal description of the Disputed Property. Moreover, the  
10 Plaintiffs in their Complaint have made claim to more than just the Disputed Property. They also  
11 made claims to property owned by Defendants Gilbertson. Yet, those claims were dismissed  
12 prior to trial.

13 From a title company's standpoint, it will be impossible, as a practical matter, to identify  
14 which party owns precisely what land. This will make it difficult, if not impossible, for either  
15 party to convey their property, or even to obtain a loan using this property as collateral.

16 At a minimum, the Defendants respectfully request that the Court clarify in its Order so  
17 that both parties will have title that can be conveyed without difficulty.

18  
19  
20 **IV. CONCLUSION**

21 For the reasons set forth above, the Defendants Tim and Carol Baker respectfully request  
22 that the Court reconsider its trial decision, and reverse its ruling quieting title to the Disputed  
23 Parcel in the Defendants.

1 DATED this 12<sup>th</sup> day of May, 2011.

2  
3 BERG & McLAUGHLIN, CHTD.

4 By: 

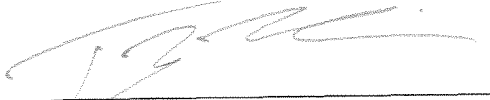
5 TOBY McLAUGHLIN

6 Attorneys for Defendants/Counterclaimants Baker  
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**CERTIFICATE OF SERVICE**

On May 12<sup>th</sup>, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
John Pandrea P.O. Box 1052 Mountain View, HI 96721 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____

  
Toby McLaughlin

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 JUN -8 A 10:07

MARIE SCOTT  
CLERK DISTRICT COURT  
DEPUTY

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
*Plaintiff In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS and BRIAN F.	)	Case No: CV2010-0703
DAVIS, husband and wife; and JEAN L.	)	
COLEMAN, an individual;	)	
	)	<b>PLAINTIFF TERRI BOYD-DAVIS'</b>
Plaintiffs,	)	<b>MOTION TO COMMENCE DAMAGES</b>
	)	<b>STAGE OF TRIAL</b>
	)	
v.	)	Hearing Date: June 22, 2011
	)	Hearing Time: 9:30 a.m.
	)	
MARY PANDREA, an individual;	)	<b>BONNER COUNTY COURTHOUSE</b>
TIMOTHY BAKER and CAROL BAKER,	)	Judge Steve Verby
husband and wife; JAMES GILBERTSON	)	
and NELLIE GILBERTSON, husband and	)	
wife; JOHN PANDREA, an individual;	)	
and DOES 1-50, inclusive;	)	
	)	
Defendants.	)	

**INTRODUCTION**

COMES NOW Plaintiff TERRI BOYD-DAVIS and motions this Court herein to schedule the damages stage of this case at the earliest practicable date. This motion is based on the arguments herein.

At the hearing held on April 28, 2011 in this case, the Court quieted title in the disputed property to plaintiffs and ordered the defendants to remove the chain link fence by June 3, 2011. The Court additionally stated its intent to refrain from commencing trial on the damages stage until defendants had an opportunity to contemplate whether they would appeal the Court's decision. The Court indicated that if defendants chose to appeal the first half of this bifurcated case, that it would possibly delay commencement of the damages stage until such time as a

ruling was made on the appeal. Plaintiff is not aware as to whether defendants have yet given any indication to the Court of their intent to appeal or not appeal.

Plaintiff Boyd-Davis respectfully requests that the Court schedule a trial on the damages stage at the earliest practicable time without consideration of whether defendants may or may not appeal the Court's decisions on liability because delaying the damages stage of the trial any further would prejudice Plaintiff.

### ARGUMENT

As the evidence at trial and through various other proceedings before this Court over the past year has shown, the property dispute in this case began in the late summer of 2008, nearly three years ago, when defendants first began removing the fence that divided plaintiffs' property from defendants Tim and Carol Baker's property. From that time through the spring of 2010, plaintiffs endured fence tear-downs, incidents of ongoing trespass, property damage, and other forms of harassment from defendants. Last spring, after defendants removed a larger portion of the dividing fence and erected the chain link fence across the plaintiffs' property, preventing plaintiffs from enjoying their property, plaintiffs filed this lawsuit in April 2010. Plaintiffs have incurred substantial damages over the past nearly three years as a result of defendants' actions.

While the Court has now quieted title to the disputed property to plaintiffs and has ordered the defendants to remove the chain link, no damages award has yet been made.

Plaintiff Boyd-Davis would be prejudiced if the Court declines to hear the damages stage of the trial until after an appeal is heard on the liability stage of the trial. Plaintiffs have been damaged by defendants' actions and should not be required to await an award for the damages they have suffered until a later date, prolonging their ability to collect on the damages due to them.

- A. A delayed damage award would cause further harm to Boyd-Davis because interest accrues on a damages judgment, once entered, but if no judgment for damages can be made until an appeal process has been completed, plaintiffs could lose potentially two years or more of interest that would otherwise accrue during the appellate stage.

Idaho Code 28-22-104(2) provides that "The legal rate of interest on money due on the judgment of any competent court or tribunal shall be the rate of five percent (5%) plus the base

rate in effect at the time of entry of the judgment.” Interest does not begin to accrue until a judgment is entered.

The instant case does not appear to be a case where pre-judgment interest could be awarded because damages are not liquidated and cannot be ascertained by mathematical computation.

“It is settled law in Idaho that pre-judgment interest is available only when damages are liquidated or are ascertainable by mere mathematical process.” *Bouten Const. Co. v. H.F. Magnuson Company*, 133 Idaho 756, 762, 992 P.2d 751, 757 (1999). In the case of *Boel v. Stewart Title Guar. Co.*, 137 Idaho 9, 17, 43 P.3d 768, 776 (2002), the Idaho Supreme Court upheld the district court’s decision to deny the plaintiffs’ claim for pre-judgment interest. The Court acknowledged that the plaintiffs had “clearly suffered some amount of damages prior to the time they brought suit,” but could not award pre-judgment interest because “the actual amount of damage was not ascertainable until the jury returned its verdict.” The situation in *Boel* is similar to that of this case in this regard.

If judgment is delayed until the appeal process is completed, which could easily be two years or longer, Plaintiff Boyd-Davis will be prejudiced by not at least accruing interest on the judgment to which she and her co-plaintiffs are entitled but upon which they are unable to collect.

- B. Delaying the trial on the judgment issue further prejudices Plaintiff because such delay could result in two appeals, delaying the termination of this case for perhaps as long as four years.

Delaying the trial on the damages issue until after an appeal on the liability issue further prejudices Plaintiff because defendants could then appeal any damage award as well. Such a situation would require two appeals, a process that could easily extend this process another four years and unnecessarily cost Plaintiff substantial extra costs and potential attorneys’ fees for two appeals.

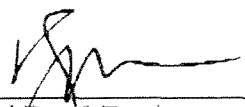
Boyd-Davis proposes that it would make more sense to commence the damages stage at this time and enter a final judgment for the entire case. Then if an appeal is brought, the appeal

could be brought on any and all issues at once in a single appeal, thereby avoiding unnecessarily prolonging this case and clogging the courts.

Boyd-Davis also believes that setting trial on the damages stage at this time could be an impetus to settlement and an opportunity to allow the parties to bring final closure to the case, potentially without the necessity of conducting a trial on the damages.

**WHEREFORE**, Plaintiff TERRI BOYD-DAVIS respectfully requests this Court schedule the second stage of this case for trial on the damages issues at the earliest practicable date.

DATED this 8<sup>th</sup> day of June 2011.

  
\_\_\_\_\_  
Terri Boyd-Davis  
Plaintiff in Pro Se

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8<sup>th</sup> day of June, 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

## PLAINTIFF TERRI BOYD-DAVIS' MOTION TO COMMENCE DAMAGES STAGE OF TRIAL

Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-263-7557
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Defendant</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
~~Brian Davis~~ Terri Boyd-Davis



2011 JUN 29 A 10:18

MARIE SCOTT  
CLERK DISTRICT COURT

DEPUTY

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12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
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*Plaintiff In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS, et al.;	)	Case No: CV2010-0703
	)	
Plaintiffs,	)	<b>PLAINTIFF TERRI BOYD-DAVIS'</b>
	)	<b>OPPOSITION TO DEFENDANTS'</b>
v.	)	<b>MOTION FOR RECONSIDERATION OF</b>
	)	<b>TRIAL DECISION AND MOTION FOR</b>
MARY PANDREA, et al.;	)	<b>CLARIFICATION</b>
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff TERRI BOYD-DAVIS ("Boyd-Davis") and submits the following Opposition to Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification filed on May 12, 2011.

**I. INTRODUCTION**

A four-day trial was held in this matter the week of March 28, 2011. On April 28, 2011, the Court held a hearing at which time it announced its decision and its orally announced its findings of fact and conclusions of law. The Court entered its Order Determining Liability and Order for Removal of Chain Link Fence on April 28, 2011 and its Amended Order Determining Liability and Order for Removal of Chain Link Fence on May 6, 2011. The Court has not yet entered a Judgment or its written Findings of Fact and Conclusions of Law.

The Court quieted title in the disputed property in this matter to Plaintiffs by determining what the intent of the grantor was based upon the Court's findings that the deeds which conveyed both the Plaintiffs' property and Defendants Timothy and Carol Baker ("Bakers") predecessors'

**Plaintiff's Opposition to Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification**

properties to them contained ambiguous legal descriptions. The Court found that it was the intent of the grantor to convey the disputed property to Plaintiffs, whose deed was senior to the Defendants' deed.

The Court applied the proper legal standard in making its decision. In a bench trial, the trial court is charged with determining the facts of the case. It must weigh the evidence and conflicting testimony, and assess the credibility of witnesses. This is the process the court just underwent after hearing hours and hours of testimony of multiple witnesses, pouring through numerous exhibits, and considering the testimony of the parties' expert witnesses.

In announcing its decision on April 28, 2011, the Court gave its carefully thought out explanation of how it reached its conclusions. Based upon Defendant Bakers' selective and faulty rendition of facts, Defendants now ask this Court to ignore the complete analysis it undertook to create its order and to reappraise its decision in Defendants' favor.

Defendants request the Court reconsider the decision announced at the hearing held on April 28, 2011. Plaintiff Boyd-Davis herein requests that the Court deny Defendants' Motion for Reconsideration but that the Court clarify that a legal description of the disputed property must and will be contained in the Court's Judgment. Boyd-Davis additionally requests that the Court clarify that Defendants failed to meet the burden to prove their affirmative defense of laches.

## II. ARGUMENT

### A. The duty of the trial court in a bench trial is to determine the facts of the case and apply the law to those facts, which this Court did.

In this case, it was firmly established by both Plaintiffs' and Defendants' experts that the deeds to the parties' properties contained ambiguous legal descriptions. It is the charge of the trial court, then, to interpret the ambiguous deeds.

In the case of *Latham v. Garner*, 105 Idaho 854, 857, 673 P.2d 1048, 1051 (1983), the Idaho Supreme Court stated that if "the instrument of conveyance is ambiguous, interpretation of the instrument is a matter of fact for the trier of fact" and "the interpretation of the grantor's intent becomes a question of fact to be determined from the instrument itself and from all the surrounding facts and circumstances."

In *Sells v. Robinson*, 141 Idaho 767, 773, 118 P.3d 99, 105 (2005), the Idaho Supreme Court stated that "[i]n construing an ambiguous deed, the Court should give effect to the parties'

intentions” and that in interpreting the deeds, “[t]he Court must consider all of the surrounding facts and circumstances.” This is exactly what the Court has done in this case as it confirmed and explained in detail at the hearing when it announced its decision. It took into account all of the surrounding facts and circumstances.

**B. The decision of the Court is supported by substantial and competent evidence.**

Idaho Rule of Civil Procedure 52(a) states in pertinent part that “[f]indings of fact shall not be set aside unless clearly erroneous. In the application of this principle regard shall be given to the special opportunity of the trial court to judge the credibility of those witnesses who appear personally before it.”

Defendants points to areas where they assert the evidence at trial was conflicting and urge this Court to change its decision based upon their rendition of the facts. But the Court has already undertaken the task of weighing the evidence in reaching its conclusion. In *Rasmussen v. Martin*, 104 Idaho 401, 405 659 P.2d 155, 159 (Ct.App.1983), the appellate court confirmed the role of the trial court: “Where evidence is conflicting, the task of weighing the evidence is reserved to the trial court.”

In the case of *Bumgarner v. Bumgarner*, 124 Idaho 629, 637, 862 P.2d 321, 329 (Idaho App. 1993), the appellate court confirms that “[t]he task of weighing evidence is within the province of the trial court, and [that it] therefore accord[s] great deference to the trial judge’s opportunity to weigh conflicting testimony and to assess the credibility of witnesses.” It went on to say that it “merely determine[s] whether the findings are supported by substantial, even if conflicting, evidence in the record [and i]f so supported, such findings will not be deemed clearly erroneous, and thus will not be disturbed on appeal.”

The case of *Bengoechea v. Bengoechea*, 106 Idaho 188, 677 P.2d 501 (Idaho App. 1984), similar to the instant case, concerned a challenge among siblings over their deceased father’s property. In this case, the trial court had made findings that one of the brothers asserted were “clearly erroneous.” On appeal, the appellate court stated, “We believe that the evidence is conflicting, insofar as these findings are concerned.” However, the Court confirmed that “[w]eighing this conflicting evidence is the task of the trial court.” The Court confirmed that when the lower court’s “findings are supported by substantial and competent, though conflicting, evidence,” they “will not be disturbed.”

In this case, the Court has already undertaken the task of weighing conflicting evidence. Defendants now request that the Court repeat this task. The Court need not and should not do so as its findings are supported by substantial and competent evidence, as it explained to the parties on April 28, 2011.

*1. The Court's finding that Harry Clark intended to convey the property north of the fence line to Plaintiff Jean Coleman and that Stratton's Figure 6 is most consistent with Clark's intent is supported by substantial and competent evidence.*

Though defendants claim that the Court's finding that Harry Clark ("Clark") intended to convey all the area north of the fence to Plaintiffs is irreconcilable with the Court's finding that the fence was built by Johnson, it is not irreconcilable, as the Court explained.

The Court found that Clifford Johnson's ("Johnson") testimony at trial had been impeached and that he was shown to have a bias. It stated that it did not accept Johnson's testimony that he began the fence at the northeast corner of the property line and then went "willy nilly" off the line, which would then "conveniently fit the theory of the defense." The Court found that the Johnson's treated the fence as the boundary and based upon *all* the evidence, *all* the facts, and *all* the testimony submitted at trial, that it makes more sense that Johnson built the remainder of the fence on what the parties believed to be the boundary line. It found this was supported by the fact that Clark pointed out the fence as the boundary to Coleman after it was built by Johnson because that was where Clark intended the line to be. The Court found that Clark would not have moved the cabin onto the boundary line and that Clark, who owned a great deal of property in this area, would not have conveyed unusable property to his daughter. All of these findings, which are supported by substantial and competent evidence support the Court's findings.

The Court noted that it considered all of the surrounding circumstances, not just the testimony of Plaintiff Jean Coleman ("Coleman") or Johnson. This included the testimony of Defendants' and Plaintiffs' expert witnesses, both of whom agreed the parties' deeds were ambiguous, were prepared by a lay person, and that there were many possible interpretations of the deeds. The evidence presented at trial made it clear that Clark had written numerous legal descriptions that were problematic and did not properly convey properties as he intended, such as is the case here.

**C. Defendants' affirmative defense of laches must fail because Defendants have failed to prove they have met the elements of this affirmative defense.**

In the Idaho Court of Appeals case of *Landis v. Hodgson*, the Court explained the defense of laches as follows:

Whether or not a party is guilty of laches is a question of fact determined from all the evidence and circumstances adduced at trial. *Huppert v. Wolford*, 91 Idaho 249, 420 P.2d 11 (1966). To invoke the defense of laches, Idaho requires the following elements to be proven: (1) defendant's invasion of plaintiff's rights, (2) delay in asserting plaintiff's rights, the plaintiff having had notice and an opportunity to institute a suit, (3) lack of knowledge by defendant that plaintiff would assert his rights, and (4) injury or prejudice to defendant in event relief is accorded to plaintiff or the suit is not held to be barred.

109 Idaho 252, 259, 706 P.2d 1363, 1370 (Idaho App. 1985)

In this case, Plaintiffs did not delay in asserting their rights once Defendants invaded their rights. Prior to 2008, there had been no invasion of Plaintiffs' rights. Plaintiffs were first made aware that Defendants Bakers made a claim to the disputed property in the latter part of 2008 upon discovering that Defendants had torn down a portion of the fence that had divided Plaintiffs' property from Defendants Bakers' property. Plaintiffs immediately asserted their rights to the property, ultimately filing suit in April 2010 after the dispute escalated when Defendants erected the chain link fence across the disputed property.

Although Defendants Bakers assert that the evidence at trial demonstrated that Jean Coleman was aware of the issues with respect to her legal descriptions no later than 1981, this is simply not true. Defendants support their argument with the following faulty references to evidence produced at trial:

- 1) Letter from Tucker Engineering dated October 12, 1979 (Defendants' Exhibit HH).

This letter was addressed to Mr. A.C. Peck, Trust Department, Bank of Idaho. There is no evidence that Jean Coleman ever saw this letter. Ms. Coleman testified at trial that she did not believe she ever received a copy of this letter and has no recollection of having ever seen it.

- 2) 1981 Tucker Survey (Defendants' Exhibit B). The evidence at trial confirmed that this survey was prepared for "Bank of Idaho, Trustee for Harry Clark Estate" (Plaintiffs' Exhibit No. 20) and not for Jean Coleman.

- 3) Testimony of defense witness Michael Stewart. Although Defendants claim that it was the testimony of Michael Stewart that Ms. Coleman asked to be present during the 1981 survey, that was not Mr. Stewart's testimony. Mr. Stewart testified that he had no recollection of ever meeting or speaking with Ms. Coleman.

At trial, under cross-examination from the defense, Plaintiff Jean Coleman confirmed that she knew nothing about any problems with her property descriptions until 2008 and that she was not even aware that a survey had been done on her property in 1981.

In addition to the fact that there was simply no evidence at trial that Plaintiff Jean Coleman was aware prior to 2008 that there were any problems with the legal descriptions contained in the deeds to her property, the evidence and testimony of the witnesses confirmed that there had not been any dispute about property boundaries until 2008. Neither Jean Coleman, the Bakers, the Bakers' predecessors, the Johnson's, or anyone else even knew where the boundary line of the properties was located, but the evidence did indicate that the fence that continuously divided the properties since 1971 was treated by the parties as the boundary line. The evidence at trial confirmed that during the years the Johnson's owned the Baker property (1971-2007), they never asserted claims to the disputed property.

Defendants' affirmative defense of laches fails. Plaintiffs did not sit on their rights. There was no evidence that anyone made claim to Plaintiffs' property until the late summer of 2008 when Plaintiffs first discovered a portion of the fence that divided their property from the Bakers' had been torn down. Plaintiffs took immediate action to protect their property at that time by rebuilding the fence, erecting "No Trespassing" signs and communicating their claims to Defendants. A year and half later when Defendants' actions became more aggressive, Plaintiffs filed this suit.

**D. The Court's findings of fact support Plaintiffs' claims for a boundary by agreement.**

Defendants Bakers claim that it must be inferred that the Court concluded that Plaintiffs failed to satisfy their burden with respect to their claims of adverse possession and boundary by agreement. The Court made no specific findings on these claims presumably because the Court found it unnecessary to do so based upon the fact that the Court quieted title in the disputed

property to Plaintiffs based upon its interpretation of the ambiguous deed and the intent of the grantor.

Nonetheless, while the Court did not specifically address these claims in its announcement of its decision, it is not true that the Court's findings do not support these claims, specifically Plaintiffs' boundary by agreement claim.

The Court made the following findings that support Plaintiffs' boundary by agreement claim:

- 1) Neither the Johnson's nor Jean Coleman knew precisely where the boundary line was.
- 2) Clifford Johnson testified that he started the fence where he knew the north boundary was but that he did not know how far it went.
- 3) Jean Coleman's father, Harry Clark, showed Coleman the fence as the boundary line.
- 4) The Johnson's and Coleman treated and accepted the fence as the boundary as evidenced by their use of the property.
- 5) The Court found that Clifford Johnson's testimony was impeached and that he was shown to have a bias. The Court did not accept his statement that he would have begun the fence at what he thought was the northeast corner of his property and then go "willy nilly" off what he believed to be the line, which then would then "conveniently fit the theory of the defense."

The doctrine of boundary by agreement is well established in Idaho. Boundary by agreement requires: (1) an uncertain or disputed boundary involving adjacent properties, and (2) an agreement fixing the boundary. *Neider v. Shaw*, 138 Idaho 503, 65 P.3d 525 (2003). The agreement need not be express, but may be implied by the surrounding circumstances and conduct of the parties. *Wells v. Williamson*, 118 Idaho 37, 41, 794 P.2d 626, 630 (1990). The existence of such an agreement between adjoining landowners may appear where their property rights have been defined by the erection of a fence, followed by treatment of the fence by the adjoining owners as the boundary. *Edgeller v. Johnston*, 74 Idaho 359, 365, 262 P.2d 1006, 1010 (1953). An agreed boundary binds successors in interest who purchase with notice, actual or constructive. *Paurley v. Harris*, 75 Idaho 112, 117, 268 P.2d 351, 353 (1954).

In a recent case, *Flying Elk Investment, LLC v. Cornwall*, 149 Idaho 9, 10, 232 P.3d 330, 331 (2010), the Idaho Supreme Court confirmed that although there must be an agreement,

acquiescence is regarded as “competent evidence of the agreement.” (citing *Griffel v. Reynolds*, 136 Idaho 397, 400 (2001)).

In *Flying Elk Investment*, the plaintiff/appellant, Flying Elk, the party in the position of the Bakers (i.e. the party who had the property surveyed and whose survey revealed the fence intruded onto his deeded property), attempted to disprove the boundary by agreement by emphasizing that the son of the previous property owner had testified that he and his father had believed the fence was a temporary restraint kept in place until a survey could be completed. However, the Supreme Court stated that “the Court can only evaluate the parties’ conduct, not their ‘mental operations.’” (citing *Bayhouse v. Urguides*, 17 Idaho 286, 294 (1909)). *Id.* at 11. In our case, because the Johnson’s acquiesced and treated the fence as the boundary throughout their 36+ years of ownership, the Court can do as it did in *Flying Elk Investment*. It can “therefore reasonably infer[] than the parties did use the fence as a boundary for a long time, leading to the presumption that a boundary by agreement exists.” *Id.* at 11.

The findings of the Court clearly reveal that the two elements necessary to prove a boundary by agreement exist in this case. There was an uncertain boundary involving adjacent properties, and there was an agreement fixing the boundary as was evidenced by the parties treatment of the fence as the boundary for nearly 40 years.

**E. Legal descriptions to property must be contained in the Judgment but no Judgment has yet been issued.**

Defendants complain that the Court’s ruling leaves neither party with clear title because there is no legal description of the disputed property.

Upon the Court’s ruling on this motion, Plaintiffs intend to commence a survey consistent with the Court’s ruling quieting title in the disputed property to them so that a proper legal description of the disputed property can be created. Defendants claim that the Complaint filed by Plaintiffs does not contain a legal description of the disputed property. The Complaint filed by Plaintiffs, however, clearly identifies the disputed property, which is readily depicted on the Bakers’ 2007 survey as identified in the Complaint.

As required by Idaho law (*Bethel v. Van Stone*, 120 Idaho 522, 528, 817 P.2d 188, 194 (Ct. App. 1991)), the legal descriptions of the property must be contained in the Judgment. The

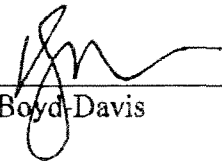


proposed Judgment, which will be submitted to the court by Plaintiffs shall contain the new legal descriptions of the disputed property.

### III. CONCLUSION

For the foregoing reasons, Plaintiff Boyd-Davis respectfully requests that the Court deny defendants' motion for reconsideration of trial decision.

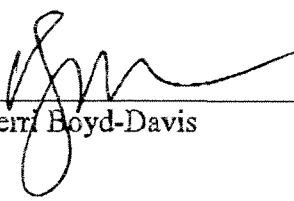
DATED this 24<sup>th</sup> day of June 2011.

  
\_\_\_\_\_  
Terri Boyd-Davis

# CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **PLAINTIFF TERRI BOYD-DAVIS' OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OF TRIAL DECISION AND MOTION FOR CLARIFICATION** was served on the following in the manner indicated on this 29<sup>th</sup> day of June, 2011.

D. Toby McLaughlin Berg & McLaughlin, Chdt. 414 Church Street, Ste 203 Sandpoint, ID 83864 Phone: 208-263-4748 Fax: 208-263-7557 <i>Attorney for Defendants</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-263-7557
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
John Pandrea P.O. Box 1052 Mountain View, HI 96771 <i>Defendant</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
 Terri Boyd-Davis

Plaintiff's Opposition to Defendants' Motion for Reconsideration of Trial Decision and Motion for Clarification

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 SEP -2 P 4:11

MARIE S. COLEMAN  
CLERK DISTRICT COURT  
*cm*  
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

**TERRI BOYD-DAVIS and BRIAN F. DAVIS,** )  
**husband and wife; and JEAN L. COLEMAN,** )  
**an individual,** )

**Plaintiffs,** )

**vs.** )

**MARY PANDREA, an individual; TIMOTHY** )  
**BAKER and CAROL BAKER, husband and** )  
**wife; JAMES GILBERTSON and NELLIE** )  
**GILBERTSON, husband and wife; JOHN** )  
**PANDREA, an individual; and DOES 1-50,** )  
**inclusive,** )

**Defendants.** )

**TIMOTHY BAKER and CAROL BAKER,** )  
**husband and wife; and JAMES GILBERTSON** )  
**and NELLIE GILBERTSON, husband and wife,** )

**Counterclaimants,** )

**vs.** )

**TERRI BOYD-DAVIS and BRIAN F. DAVIS,** )  
**husband and wife; and JEAN L. COLEMAN,** )  
**an individual,** )

**Counterdefendants.** )

**CASE NO. CV-2010-0000703**

**DECISION RE: BAKERS' MOTION  
FOR CLARIFICATION AND  
RECONSIDERATION**

## **I. PROCEDURAL BACKGROUND**

On April 28, 2011, in open court, the Court announced a decision on the liability phase of the trial. The Court set forth findings of fact and conclusions of law, quieting title in the disputed property in the plaintiffs and ordering Defendants Timothy and Carol Baker to remove the chain link fence by June 3, 2011. The “Order Determining Liability and Order for Removal of Chain Link Fence (Amended)” was entered on May 6, 2011.

On May 12, 2011, the Bakers filed a motion for reconsideration of the trial decision and motion for clarification. The motion came before the Court for a hearing on July 6, 2011.

## **II. THE PARTIES’ ARGUMENTS**

### **A. The Bakers’ Arguments**

The Bakers request that the Court reconsider the trial decision, on the grounds that the findings of fact and conclusions of law directly conflict with one another and the decision is irreconcilable with the findings of fact. They set forth the following arguments:

1. The decision is based upon irreconcilable findings of fact – Harry Clark could not have intended to convey property up to a fence that was not yet in existence.

The Court found that Harry Clark, the original grantor of both the plaintiffs’ and the Bakers’ properties intended in 1970 to convey to Jean Coleman land up to the fence line depicted on the 2007 Glahe Survey. The Court also found that Cliff Johnson built the fence in 1971.

Harry Clark could not have intended to convey property up to a fence line that did not exist at the time of conveyance. Unless Mr. Clark had reason to know in 1970 that a fence line was going to be constructed and its potential location, he could not have intended that the fence

line demarcate the Southern boundary of the Coleman property. There was no evidence presented at trial indicating that Cliff Johnson and Harry Clark discussed the fence or its location. Mr. Johnson testified that he never discussed the location of the Northern boundary with anyone. Thus, Harry Clark could not have intended to convey property up to the fence line because he could not have known where it would be built. As such, the finding that Harry Clark intended, by the deed executed in 1970, to convey property up to the fence line is irreconcilable with the finding that Cliff Johnson built the fence in 1971.

The Court based its finding that Harry Clark intended to convey land up to the fence line upon the existence of the driveway that leads up to the cabin and the parking area which sits to the South of the cabin. When the second parcel was conveyed to Jean Coleman in 1970, however, the cabin had not yet been placed on the property. Consequently, the driveway did not extend to the cabin and there was no parking area. Thus, the Court cannot reasonably base a finding of Mr. Clark's intent on these features, which did not exist at the time of the conveyance.

The Court further surmised that Harry Clark would not have placed the cabin on the property line. Even if this were true, it does not support the finding that he intended to convey property up to the fence line.

At most, Harry Clark may have intended what is shown in the unrecorded Tucker drawing in Plaintiffs' Exhibit 23—that the boundary line lies somewhere to the South of the surveyed boundary. Such an overlap would mean that the Coleman property encompasses the cabin, but not all of the disputed property. This is a more reasonable conclusion, as it would not rely on improvements which did not exist at the time of conveyance, or require that the legal

description be arbitrarily rotated more than 23 degrees counterclockwise. The plaintiffs failed to present the Court with sufficient evidence to be able to locate the corners as they are depicted in Exhibit 23. Consequently, they failed to prove their claim for quiet title.

2. The findings are based on the testimony of Jean Coleman, which was contradicted by the evidence admitted at trial.

Jean Coleman indicated that she walked the fence at the time her father conveyed the property to her and that her father indentified the fence as her boundary line at that time. Cliff Johnson, however, did not build the fence until some time the next year. Ms. Coleman also improperly identified the fence as wood and wire, which directly contradicted the testimony of Mr. Johnson as well as the photograph of the fence in Plaintiffs' Exhibit 34. Despite these inconsistencies, the Court found that Ms. Coleman must have walked the fence with her father after it was constructed by Mr. Johnson. This is not supported by evidence admitted at trial.

In reasoning that Jean Coleman must have been mistaken as to the date that she walked the property with her father, the Court relied upon Defendants' Exhibit OO, which is a photograph showing two young girls and horses with a wood and wire fence in the background. The Court concluded that the wood and wire fence in the background of Exhibit OO is the same fence shown in Exhibit 34. This also is not supported by evidence admitted at trial.

The fence depicted in Exhibit OO was located on the Southern parcel, as testified by Cliff Johnson. His testimony was not contradicted, and there is no evidence in the record to support a finding that any part of the fence line was anything other than a split rail fence, until it was replaced by barbed wire and metal fence posts after Bob Camp began living in the cabin.

There would have been no reason for Jean Coleman to walk Cliff Johnson's southern parcel with her father. Thus, her testimony that the fence she saw when she walked the property was wood and wire impeaches her own credibility, as Mr. Johnson's uncontroverted testimony and the Bob Camp photographs in Plaintiffs' Exhibit 44 prove that the fence was split rail.

3. The finding that Robert Stratton's Figure 6 depicted Harry Clark's intent is not supported by evidence admitted at trial.

The Court concluded that the plaintiffs' expert witness, Robert Stratton's interpretation of the Coleman deeds, as depicted on Figure 6, is consistent with the intent of Harry Clark in conveying land to Jean Coleman. This conclusion relies heavily upon the assumption that the call to the point of beginning in the Coleman deeds resulted in a point lying North of the Old Pack River Road. The only evidence submitted to support this finding is the surveys, the earliest of which was recorded in 1979. Coleman's first deed, however, was executed in 1966, more than a decade before the first recorded survey. The Old Pack River Road no longer exists in this location. It was replaced and moved South in 1980. Therefore, it is not reasonable to conclude that the Coleman deed calls to a point of beginning lying North of the Old Pack River Road, because there is no evidence in the record as to the location of that road in 1966, or even in 1970. In 1966, when Harry Clark drafted the deed, the edge of the road may have been exactly where he called the point of true beginning, and there is nothing the record to contradict this conclusion.

Mr. Stratton testified that when interpreting conflicting calls in a deed, you must identify the location of the call as of the date the legal description was drafted. Furthermore, if there is

evidence that a called monument has moved, you would hold the distance call. You must be certain of the location of the called item in order to hold it over a distance call.

Mary Pandrea testified that the Old Pack River Road was an old dirt road, which was very muddy and had washed out during that time period. Even Mr. Stratton admitted that by 1979, the road likely moved from its location in 1966. Consequently, there is insufficient evidence in the record to support the Court's conclusion that the point of beginning identified in the Coleman deeds was to a point North of the edge of the Pack River Road, as it existed in 1966.

In accepting Mr. Stratton's Figure 6 as a depiction of Harry Clark's intent, the Court must have concluded the following: (1) Mr. Clark intended to land lock his own property to the South; (2) Mr. Clark intended to have the property reach Pack River, despite a lack of any call to that easily identifiable object; (3) Mr. Clark intended that the fence mark the Southern boundary of the property, even though it did not exist at the time of the conveyance; and (4) Mr. Clark intended that the Southern boundary be rotated more than 23 degrees counterclockwise, even though the deed calls simply to "225 feet East." These conclusions are not supported by the evidence admitted at trial.

4. The plaintiffs' claims are barred by the doctrine of laches.

The Bakers asserted a defense of laches in their Amended Answer and argued this defense at trial. The Court, however, did not make any findings of fact or conclusions of law as to this affirmative defense.



The evidence at trial demonstrated that Jean Coleman was aware of the issues with respect to her legal descriptions no later than 1981. Tucker Engineering provided such notification by letter dated October 12, 1979. (*Defendants' Exhibit HH*). Evidence was admitted that Ms. Coleman was part of this process and asked to be present during the Jean Coleman survey. (*Defendants' Exhibit X; Testimony of Michael Stewart*). New legal descriptions were drafted in 1981 for Ms. Coleman by Tucker Engineering, which directly addressed the ambiguities in the deeds. (*Plaintiffs' Exhibit 21*).

Jean Coleman chose not to address these issues until almost 30 years later when witnesses are no longer available, evidence has been lost, and memories have faded. The loss of evidence has substantially prejudiced the Bakers, particularly in light of the Court's determination that Cliff Johnson's memory is not reliable. As such, the Court should make particularized findings of fact and conclusions of law regarding this defense.

5. The Court's ruling leaves neither party with clear title.

As the record now stands, the Court has quieted title in the plaintiffs to "the disputed parcel of real property involved in this lawsuit." This is problematic. The Plaintiffs' Complaint does not contain a legal description of the disputed property. Moreover, the plaintiffs in their Complaint made claim to more than just the disputed property. They also made claims to property owned by Defendants Gilbertson. Those claims were dismissed prior to trial.

As a practical matter, it is now impossible to identify which party owns precisely what land. This will make it difficult for either party to convey their property, or even obtain a loan

using this property as collateral. At a minimum, therefore, the Court should clarify its Order so that both parties will have title that can be conveyed without difficulty.

**B. The Plaintiffs' Response**

The plaintiffs contend that it was firmly established by both the plaintiffs' and the defendants' experts that the deeds to the parties' properties contained ambiguous legal descriptions, and that it was the charge of the Court to interpret the ambiguous deeds. The plaintiffs believe that the Court took into account all of the surrounding facts and circumstances and that the trial decision is supported by substantial and competent evidence.

The plaintiffs cite the standard for appellate review, i.e., findings of fact shall not be set aside unless clearly erroneous, I.R.C.P. 52(a), and contend that the "clearly erroneous" standard should apply here.

Regarding the affirmative defense of laches, the plaintiffs assert that the defense must fail because the Bakers have not proven the elements of the defense, which are:

(1) defendant's invasion of plaintiff's rights, (2) delay in asserting plaintiff's rights, the plaintiff having had notice and an opportunity to institute a suit, (3) lack of knowledge by defendant that plaintiff would assert his rights, and (4) injury or prejudice to defendant in event relief is accorded to plaintiff or the suit is not held to be barred. Lapse of time, although an important element, is not alone controlling in determining the applicability of the defense of laches, unless the party claiming laches was injured or placed at a disadvantage by such delay.

*Landis v. Hodgson*, 109 Idaho 252, 259, 706 P.2d 1363, 1370 (Ct. App. 1985) (quoting *Huppert v. Wolford*, 91 Idaho 249, 257, 420 P.2d 11, 19 (1966)).

The plaintiffs argue that they did not delay in asserting their rights once the Bakers invaded their rights and made a claim to the disputed property in 2008 by tearing down a portion of the fence.

The plaintiffs claim that, at that point, they immediately asserted their rights to the property, and filed suit in April 2010 after the Bakers erected the chain link fence across the disputed property.

Finally, as to the issue of no clear title, the plaintiffs claim that, upon the Court's ruling on this motion, they intend to commence a survey consistent with the trial decision quieting title in the disputed property to them so that a proper legal description of the disputed property can be created. "Idaho law requires that a judgment which affects an interest in real property must describe the interests with such certainty that rights and liabilities are clearly fixed." *Bethel v. Van Stone*, 120 Idaho 522, 528, 817 P.2d 188, 194 (Ct. App. 1991). In this case, a judgment has not yet been issued. According to the plaintiffs, the proposed Judgment which they submit to the Court will contain the new legal descriptions of the disputed property.

### **III. STANDARD**

A motion for reconsideration made prior to the entry of final judgment is governed by Idaho Rule of Civil Procedure 11, which provides:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

I.R.C.P. 11(a)(2)(B).

In *Van v. Portneuf Medical Center*, 147 Idaho 552, 212 P.3d 982 (2009), the Idaho Supreme Court stated:

A decision of whether to grant or deny a motion for reconsideration made pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B) is left to the sound discretion of the trial court. *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust*, 145 Idaho 208, 212, 177 P.3d 955, 959 (2008).

*Id.* at 560, 212 P.3d at 990.

#### **IV. DECISION ON THE BAKERS' MOTIONS**

##### **A. Harry Clark's Intent**

Unfortunately, when people take action on their own in an area where trained professionals are required, uncertainty occurs. It is unfortunate for the parties involved in this litigation that Harry Clark, their predecessor in interest, provided the conveyances that result in what can charitably be called a legal mess. The Court is aware that thousands of dollars and hundreds of hours have been spent by the parties in trudging through the legal quagmire created by the now departed Harry Clark. Obviously, as all parties, relatives, and counsel are aware, some of the conveyances were ambiguous and resulted in uncertainty. This uncertainty is reflected in the varied and disparate opinions of the surveyors involved with this property in the past, as well as those who are directly involved in this case.

Perhaps the work of the Surveyor Tucker most exemplifies the ambiguities demonstrated in the conveyances. His working drawings reflect potential possibilities of the interpretations of the respective deeds.

With these ambiguities in place, this Court is required to decipher the intent of the grantor, Harry Clark. The starting point is the deeds. The Bakers are correct in their analysis that it would not have been Harry Clark's intent to establish a boundary line to a fence that was

not in place at the time of the conveyance. They are also correct that the driveway and parking area adjacent to the cabin were similarly not in existence at the time the conveyances were made. But, in determining a person's intent, it is not only helpful to look at what took place before the action in question, but also what took place afterwards.

One of the fundamental concepts we hold as sentient and caring human beings is that we do not want to harm our children. The fact that the road, parking area, and cabin were placed "after the fact" reflects Harry Clark's intent that his daughter, Jean Coleman, would be able to use them in conjunction with the property he deeded to her. He would not place the cabin on real property that he did not intend to convey to Jean Coleman.

In regard to the fence itself, after reviewing the surveyors' opinions as to the boundary lines, after reflecting on Cliff Johnson's testimony that he started the fence at what he considered was the corner of his property, and after adopting the opinion of Robert Stratton as well as his interpretation of the Coleman deeds as set forth in Figure 6, on a more probable than not basis, it was Harry Clark's intention to convey property at least to the fence line that was later placed by Cliff Johnson. This fence line resulted in the Johnsons using the property up to the fence line to the North and Jean Coleman similarly limiting her use of the real property up to the fence line on the South.

**B. Laches**

The following findings of fact and conclusions of law are adopted by the Court:

The required elements of the defense of laches are:

(1) defendant's invasion of plaintiff's rights, (2) delay in asserting plaintiff's rights, the plaintiff having had notice and an opportunity to institute a suit, (3) lack of knowledge by defendant that plaintiff would assert his rights, and (4) injury or prejudice to defendant in event relief is accorded to plaintiff or the suit is not held to be barred. Lapse of time, although an important element, is not alone controlling in determining the applicability of the defense of laches, unless the party claiming laches was injured or placed at a disadvantage by such delay.

*Landis v. Hodgson*, 109 Idaho 252, 259, 706 P.2d 1363, 1370 (Ct. App. 1985) (quoting *Huppert v. Wolford*, 91 Idaho 249, 257, 420 P.2d 11, 19 (1966)).

The Bakers invaded Jean Coleman's rights when they tore down a portion of the fence. There was no material delay by the plaintiffs in asserting their rights. Accordingly, the Bakers did not prove the defense of laches.

#### **C. Clear Title**

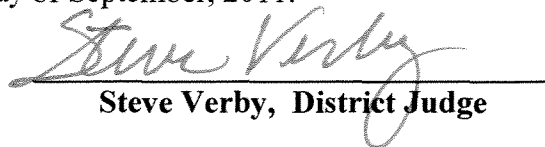
The Bakers issue regarding clear title is well taken.

Accordingly, IT IS HEREBY ORDERED that the plaintiffs conduct a survey consistent with the trial decision quieting title in the disputed property to them so that a proper legal description can be created and included in an appropriate judgment. IT IS FURTHER ORDERED that such survey and description be completed and delivered to the court and opposing counsel no later than November 4, 2011, together with a proposed judgment.

#### **V. CONCLUSION**

NOW, THEREFORE, based on the foregoing, the Bakers' motion for reconsideration is DENIED.

DATED this 2<sup>nd</sup> day of September, 2011.

  
Steve Verby, District Judge

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 2<sup>nd</sup> day of September, 2011, to:

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

Jean L. Coleman  
12738 N. Strahorn Rd.  
Hayden, ID 83835

D. Toby McLaughlin  
BERG & MCLAUGHLIN, CHTD.  
414 Church Street, Ste. 203  
Sandpoint, ID 83864

  
\_\_\_\_\_  
Deputy Clerk

2011 SEP -2 P 4: 01

MAHECOTT  
CLERK DISTRICT COURT  
*cm*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS, )  
husband and wife; and JEAN L. COLEMAN, )  
an individual, )

Plaintiffs, )

vs. )

MARY PANDREA, an individual; TIMOTHY )  
BAKER and CAROL BAKER, husband and )  
wife; JAMES GILBERTSON and NELLIE )  
GILBERTSON, husband and wife; JOHN )  
PANDREA, an individual; and DOES 1-50, )  
inclusive, )

Defendants. )

TIMOTHY BAKER and CAROL BAKER, )  
husband and wife; and JAMES GILBERTSON )  
and NELLIE GILBERTSON, husband and wife, )

Counterclaimants, )

vs. )

TERRI BOYD-DAVIS and BRIAN F. DAVIS, )  
husband and wife; and JEAN L. COLEMAN, )  
an individual, )

Counterdefendants. )

CASE NO. CV-2010-0000703

ORDER DENYING ENTRY OF  
DEFAULT AGAINST JOHN  
PANDREA



## I. FACTS

On March 14, 2011, the plaintiffs filed an “Application for Entry of Default of Defendant John Pandrea.” The facts in this matter relevant to the application for default are as follows:

1. The plaintiffs’ original “Verified Complaint to Quiet Title and for Injunctive Relief” was filed on April 19, 2010. A Summons was issued by the court clerk on the same date.

2. On June 23, 2010, the plaintiffs filed a “Motion for Order Authorizing Publication in Lieu of Personal Service on Out-of-State Defendant John Pandrea,” together with a supporting affidavit from Plaintiff Terri Boyd-Davis. A hearing on the motion was held on July 7, 2010, at which the Court declined to grant the motion, instructing the plaintiffs to submit an affidavit adequately stating why personal service cannot be made on Mr. Pandrea.

3. On August 25, 2010, the plaintiffs filed an “Amended Motion for Order Authorizing Publication in Lieu of Personal Service on Out-of-State Defendant John Pandrea,” together with a supplemental affidavit from Terri Boyd-Davis. A hearing on the motion was held on September 10, 2010. The Court entered an Order authorizing service by publication. On October 6, 2010, a Summons by Publication was issued by the court clerk.

5. Service by publication was not made because Ms. Boyd-Davis did not want to incur the cost of publishing the Summons in the *Hawaii Tribune-Herald*. (Affidavit of Terri Boyd-Davis in Support of Application for Entry of Default of Defendant John Pandrea, at ¶ 17, Exh. 7). Therefore, service by publication upon John Pandrea was never made.

6. On February 15, 2011, John Pandrea filed a letter with the Court stating that he had never been served through publication, and asked the Court to dismiss the claims against him. The Court determines this to be a special appearance contesting jurisdiction.

7. On February 23, 2011, Terri Boyd-Davis filed a “Notice of Intent to Take Default of Defendant John Pandrea” for failure to answer the plaintiffs’ Third Amended Complaint. The Third Amended Complaint was filed on this same date. The Third Amended Complaint was not served on John Pandrea.

8. On March 2, 2011, John Pandrea filed “Defendant John Pandrea’s Answer to Plaintiff’s Notice of Intent to Take Default of Defendant John Pandrea, Defendant John Pandrea’s Motion for Dismissal of All Charges Brought by Plaintiffs Against Defendant John Pandrea, and Defendant John Pandrea’s Objection to Plaintiff’s Unauthorized Practice of Law.” In this pleading, Mr. Pandrea requests dismissal of the claims against him on the grounds that he has never been served a summons to appear before this Court, and because the six (6) month time limit for service of the summons and complaint has lapsed, pursuant to I.R.C.P. 4(a)(2).

9. On March 14, 2011, the plaintiffs filed an “Application for Entry of Default of Defendant John Pandrea,” requesting that default be entered for failure to plead, answer, or otherwise defend against the plaintiffs’ Third Amended Complaint. The plaintiffs also filed the “Affidavit of Terri Boyd-Davis in Support of Application for Entry of Default of Defendant John Pandrea” (hereafter, “Boyd-Davis Affidavit”).

10. On March 23, 2010, Defendants Timothy and Carol Baker filed “Defendant Bakers Opposition to Plaintiffs’ Application for Entry of Default of Defendant John Pandrea.”

The Bakers argue that the Court lacks personal jurisdiction to enter default against John Pandrea because Mr. Pandrea was never served in this matter nor did he ever appear.

## **II. DISCUSSION**

### **A. The First Amended Complaint Was Not Properly Served**

Terri Boyd-Davis concedes in her affidavit that despite the court order authorizing service by publication, and the clerk's issuance of the Summons by Publication, she chose not undertake service because she did not want to incur the cost of publishing the summons in the *Hawaii Tribune-Herald*. (Boyd-Davis Affidavit, at ¶ 7, Exh. 7). Accordingly, it is uncontroverted that John Pandrea was never served with process in accordance with the procedures set forth in the Idaho Rules of Civil Procedure and the Idaho Code. Ms. Boyd-Davis' claim that she mailed the Summons and First Amended Complaint to John Pandrea's last known address (Boyd-Davis Affd., at ¶ 15) is not sufficient service under I.R.C.P. 4 and I.C. § 5-508 and § 5-509.

Further, I.R.C.P. 4(a)(2) provides:

If a service of the summons and complaint is not made upon a defendant within six (6) months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with 14 days' notice to such party or upon motion.

The original Complaint in this matter was filed on April 19, 2010. In order to be timely, service of process was required within six (6) months of that date. Here, no service of process in accordance with I.R.C.P. 4 and I.C. § 5-508 and § 5-509 was ever made.

**B. The Third Amended Complaint Was Not Properly Served**

On February 23, 2011, Terri Boyd-Davis filed a "Notice of Intent to Take Default of Defendant John Pandrea" for failure to answer the plaintiffs' Third Amended Complaint. The Third Amended Complaint was filed on this same date. The Certificate of Service attached to the Third Amended Complaint indicates that it was sent to John Pandrea via "U.S. Mail, Postage Prepaid."

As explained above, mailing a Complaint in this manner is not sufficient service under Idaho law.

**III. CONCLUSION**

NOW, THEREFORE, based on the foregoing, the plaintiffs' application for entry of default against Defendant John Pandrea is denied.

IT IS SO ORDERED.

DATED this 2nd day of September, 2011.

  
\_\_\_\_\_  
**Steve Verby**  
**District Judge**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 2<sup>nd</sup> day of September, 2011, to:

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

Jean L. Coleman  
12738 N. Strahorn Rd.  
Hayden, ID 83835

John Pandrea  
P.O. Box 1052  
Mountain View, HI 96771

D. Toby McLaughlin  
BERG & MCLAUGHLIN, CHTD.  
414 Church Street, Ste. 203  
Sandpoint, ID 83864

  
\_\_\_\_\_  
Deputy Clerk

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Gilbertson and Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 SEP 30 P 4:50

MARIE SCOTT  
CLERK DISTRICT COURT

*MS*  
DEPUTY

8  
9 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
10 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

11 TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
12 husband and wife; and JEAN L. COLEMAN, an  
13 individual,

14 Plaintiffs,

15 vs.

16 MARY PANDREA, an individual; TIMOTHY  
17 BAKER and CAROL BAKER, husband and  
18 wife; JAMES GILBERTSON and NELLIE  
19 GILBERTSON, husband and wife; JOHN  
20 PANDREA, an individual; and DOES 1-50,  
21 inclusive,

22 Defendants.

NO. CV 2010-00703


MOTION FOR 54(b) CERTIFICATION and  
NOTICE OF HEARING

23 I. MOTION

24 COMES NOW Defendants Timothy and Carol Baker, by and through their attorney Toby  
25 McLaughlin and hereby moves the court for a certification of final judgment pursuant to IRCP  
54(b). This motion is supported by Defendant's Memorandum In Support Of Motion For 54(b)  
Certification.

DATED this 28<sup>th</sup> day of September, 2011.

BERG & McLAUGHLIN, CHTD.


By:   
TOBY McLAUGHLIN  
Attorneys for Defendants Baker

## II. NOTICE OF HEARING

Notice is given that a hearing on Defendant's Motion For 54(b) Certification will be held in a courtroom of the above-entitled court before Honorable Steve Verby, on the 7<sup>th</sup> day of December, 2011 at the time of 10:00 a.m.

DATED this 28<sup>th</sup> day of September, 2011.

BERG & McLAUGHLIN, CHTD.

By:   
TOBY McLAUGHLIN  
Attorneys for Defendants Baker

## CERTIFICATE OF SERVICE

On September 29, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
John Pandrea P.O. Box 1052 Mountain View, HI 96721 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other



1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
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5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Gilbertson and Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 SEP 30 P 4: 51

MARIE SCOTT  
CLERK DISTRICT COURT

DEPUTY

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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN, an  
individual,

Plaintiffs,

vs.

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

NO. CV 2010-00703

MEMORANDUM IN SUPPORT OF  
MOTION FOR 54(b) CERTIFICATION

I. PROCEDURAL BACKGROUND

This matter was bifurcated by the court into separate trials for quiet title and damages. On April 28, 2011 the Court announced its decision orally for the quiet title phase of the trial. On May 12, 2011, the Defendants Baker filed a motion for reconsideration and clarification. On or about June 8, 2011 Plaintiff Terri Boyd-Davis filed a motion requesting the damages stage of trial. On September 7, 2011, the court denied the motion for reconsideration but supplemented its decision April decision. The court also ordered a survey of the property and a proposed judgment. Defendants Baker seek leave of the court to appeal.



## II. STANDARD

Idaho R. Civ. P. 54(b) permits entry of final judgment on one or more, but less than all, of the claims or parties in an action involving multiple claims or parties, thereby permitting appeal on that portion of the judgment and commencing the time during which the appeal must be taken. Idaho R. Civ. P. 54(b) provides that such a partial judgment may only be entered on an express determination that there is no just reason for delay, and requires the execution by the court of a certificate, in a form specified in the Rule, on the written judgment. The Idaho Supreme Court has cautioned that partial final judgments under the Rule "should not be entered routinely or as a courtesy or accommodation to counsel," and should be used "only 'in the infrequent harsh case.'" *Pichon v. L. J. Broekemeier, Inc.*, 99 Idaho 598, 586 P.2d 1042 (1978). Where an appeal is taken from a partial judgment which is certified as final under the rule, the trial court loses jurisdiction over the entire action. Idaho R. Civ. P. 54(b)(2).

## III. ARGUMENT

During the April 28, 2011 decision, the Court stated that it would refrain from setting the damages phase of trial until such a time as the Defendants had contemplated appeal, if they intended to exercise such rights. The Court also stated that an appeal would likely delay the damages stage. Defendants have considered the issue and now request the Court's leave to pursue an appeal through certification appended to the judgment.

### A. The Judgment Will Completely Resolve Ownership of The Property.

The Court has ruled on the substantive issues of ownership of the disputed property. The remaining claims are for trespass, timber trespass and punitive damages. Permitting appeal now is logical because the issues of ownership are completely and finally determined between the parties.

### B. The Claims Resolved Are Independent of Remaining Claims.

In analyzing whether a 54(b) certificate is appropriate, the Idaho Court of Appeals has considered the impact of claims certified for appeal on any remaining issues. In *CIT Fin. Services v. Herb's Indoor RV Ctr.*, 108 Idaho 820, 702 P.2d 858, (Ct. App. 1985) the trial court entered partial summary judgment in favor of a creditor and certified the judgment as final under

1 IRCP 54(b). The Court of Appeals reversed the partial summary judgment finding issues of fact.  
2 The court also went on to say in a footnote that the appeal was improper because (1) the trial  
3 court had not used the proper certification, (2) there were possible offsets which affected the  
4 claims on appeal and (3) possible defenses impacted the claims on appeal. *CIT Fin. Services v.*  
5 *Herb's Indoor RV Ctr.*, 108 Idaho 820, 822, 702 P.2d 858, 860 (Ct. App. 1985) (Footnote 1).


6 That is not the situation in the instant case. The issues determined by the Court in this matter  
7 are separate and independent from the remaining issues. The issues on appeal do not leave a  
8 possible offset against Plaintiff's claim for trespass, timber trespass or punitive damages.  
9 Further, defenses to the ownership issues do not impact the damages claims. In short, ownership  
10 of the disputed parcel is clearly distinct from the issues of trespass and damages.

#### 11 **C. There Is No Just Reason For Delay**

12 The outcome of the appeal will determine whether the remaining issues must be tried by the  
13 parties. The issues to be appealed are complete separate and distinct from the damages phase of  
14 this trial. Settling the issues on appeal will completely resolve ownership prior to moving  
15 forward. Seeing as the court intends to enter judgment on the issue of ownership, Plaintiffs  
16 respectfully request that the judgment contain a 54(b) certification of appeal permitting Plaintiffs  
17 to appeal the issues of law and fact supporting the judgment so as to avoid the time, expense and  
18 cost of a damages phase.

19 DATED this 28<sup>th</sup> day of September, 2011.

BERG & McLAUGHLIN, CHTD.

20 By:   
21 TOBY McLAUGHLIN  
22 Attorneys for Defendants Baker  
23  
24  
25

# CERTIFICATE OF SERVICE

On September 29, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other
John Pandrea P.O. Box 1052 Mountain View, HI 96721 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other

*Sophistication*

1 D. TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Attorneys at Law  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208) 263-4748  
6 Facsimile: (208) 263-7557

7 *Attorneys for Defendants Baker*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 NOV 15 A 10:46

MARIE SCOTT  
CLERK DISTRICT COURT

DEPUTY

8 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

10 TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
11 husband and wife; and JEAN L. COLEMAN, an individual, NO. CV 2010-00703

12 Plaintiffs,

13 vs.

DEFENDANT BAKERS' OBJECTION TO  
PLAINTIFFS' PROPOSED JUDGMENT

14 MARY PANDREA, an individual; TIMOTHY  
15 BAKER and CAROL BAKER, husband and  
16 wife; JAMES GILBERTSON and NELLIE  
17 GILBERTSON, husband and wife; JOHN  
18 PANDREA, an individual; and DOES 1-50,  
19 inclusive,

20 Defendants.

21 COMES NOW, Defendants TIMOTHY AND CAROL BAKER, by and through their  
22 attorney of record, Toby McLaughlin, and hereby objects to the proposed judgment submitted by  
23 the Plaintiffs.

24 I. SUMMARY OF ARGUMENT

25 The Bakers respectfully object to the Proposed Judgment submitted by the Plaintiff, for a  
number of reasons. First, the legal description and preliminary survey put forth by the Plaintiffs  
contains numerous errors, and conveys property not to the 1970 fence line, but to an arbitrary

1 line unsupported by the evidence or the Court's trial decision. Second, the proposed judgment  
2 results in a legal description of the Coleman property which contradicts virtually all of the  
3 distance and bearing calls in the Coleman deed, and also results in a parcel of such a bizarre  
4 shape that it cannot reflect Harry Clark's intent. Finally, the proposed judgment sets the Eastern  
5 boundary line of the Disputed Property far beyond where any of the surveyors believed that it  
6 lies, resulting in a unsupported windfall to the Plaintiffs to land that is clearly outside that  
7 conveyed in the deed from Harry Clark. For these reasons, that Plaintiffs ask the Court to reject  
8 the Plaintiffs' proposed judgment.

9 **A. The Legal Description Put Forth by the Plaintiffs Does not Convey Property up to**  
10 **the Fence Line, Rather, it Conveys to an Arbitrary Line.**

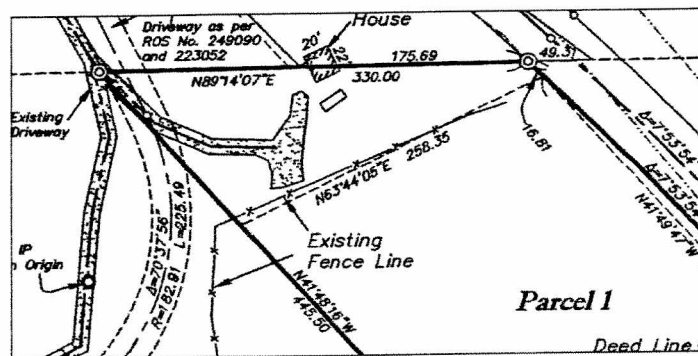
11 In its Amended Order Determining Liability, filed herein on May 6, 2011, the Court found  
12 that "Title to the disputed parcel of real property involved in this lawsuit is quieted in the  
13 plaintiffs." The Court clarified this ruling in its Decision Re: Baker's Motion for Clarification  
14 and Reconsideration, entered herein on September 2, 2011, ordering the Plaintiffs to conduct a  
15 survey "consistent with the trial decision quieting title in the disputed property."

16 On November 4, 2011, the Plaintiffs submitted a proposed judgment, in which they  
17 include a legal description of what they purport is the Disputed Property. The Southern  
18 Boundary of the legal description, however, is a straight line that does not follow the old fence  
19 line. The Bakers submit that the adoption of this legal description does not adhere to the Court's  
20 trial decision.

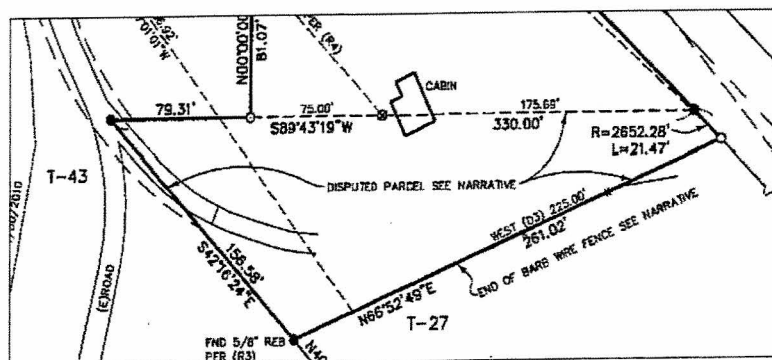
21 The issue turns on the definition of "the Disputed Property." In the Plaintiffs Third  
22 Amended Complaint, they claimed ownership in the "Disputed Property," which the Plaintiffs  
23 define as "the real property north of the 1970 Fence Line." *Third Amended Complaint*, ¶ 11. The  
24 Plaintiffs define the "1970 Fence Line" as:  
25

A fence [which] has divided the boundary continuously since at least 1970, see "Existing Fence Line" designated in the Record of Survey for Tim Baker recorded on November 26, 2007 as Instrument No. 741564 in Bonner County, State of Idaho, attached hereto as Exhibit "D" ("Baker Survey").

The Plaintiffs, therefore, have defined the Disputed Property as the area North of the 1970 fence line, the location of which is specifically identified in the Baker Survey. While there is also a dashed arbitrary line, which appears to have been incorporated from the 1981 Tucker survey, this dashed line is not the fence line.



The southern boundary of the legal description submitted by the Plaintiffs in their proposed judgment does not follow the 1970 fence line. The legal description set forth in the proposed judgment is depicted on a draft survey delivered by the Plaintiffs (hereinafter "the Stratton Survey"). This survey depicts the Southern Boundary of the Disputed Parcel not as the fence line, but as a straight arbitrary line, which does not follow the "existing fence line" depicted on the Baker Survey.



1 In fact, the Southern boundary as shown on this Stratton Survey does not even follow the  
2 arbitrary dashed line as shown on the Baker Survey. Rather, this Southern Boundary is at least  
3 four feet to the South, as is shown by the distance of the Eastern Boundary of the Disputed  
4 Property, which is 16.81 feet on the Baker Survey, and 21.47 feet on the Stratton Survey.

5 For this reason, the Bakers respectfully submit that the Proposed Judgment does not  
6 reflect the Court's trial decision.

7  
8 **B. The Legal Description and Stratton Survey Contain Inaccuracies.**

9 The Bakers further object to the Proposed Judgment on the grounds that it contains errors.  
10 Specifically, the second paragraph of the legal description contained in the proposed judgment  
11 states, "Commencing at the Southeast *Quarter* of said Section 11 . . ." (emphasis added). It is  
12 impossible to commence a legal description at the Southeast Quarter of a Section. Rather, it  
13 appears that the Plaintiffs' surveyor intended that the legal description to commence at the  
14 Southeast *Corner* of Section 11. Consequently, the legal description is not accurate.

15  
16 Additionally, attached to the proposed judgment submitted by the Plaintiffs is Record of  
17 Survey performed by Robert Stratton. This record of survey contains numerous errors. The  
18 erroneous reference to the "Southeast Quarter" as the point of commencement is repeated three  
19 times throughout the record of Survey. Moreover, the Record of Survey indicates that the  
20 Westerly boundary of the Coleman parcel was agreed to during mediation, which is flatly untrue.  
21 Thus, the Record of Survey contains erroneous information and should not be adopted by the  
22 Court.

23 For these reasons, the Defendants object to the proposed judgment submitted by the  
24 Plaintiffs.  
25

1 **C. The Stratton Survey Ignores Nearly All of the Calls in the Coleman Deed.**

2 The Plaintiffs respectfully submit that the legal description contained in the Proposed  
3 Judgment cannot reasonably reflect the intent of Harry Clark. If the Court accepts the legal  
4 description in the proposed judgment as reflecting the intent of Harry Clark, then the Court  
5 would need to ignore nearly every call in the deed drafted by Harry Clark, both as to distance  
6 and bearing. That legal description in Jean Coleman's 1970 quitclaim deed reads:

7 A parcel of land located in Section 11, Township 59 North of  
8 Range 2 West of the Boise Meridian described as follows:

9 Commencing at a point 1250 feet North and 25 feet East of the  
10 Southwest corner of the Southeast Quarter of Southeast Quarter of  
11 Section 11, Township 59 North of Range 2 West of the Boise  
12 Meridian, thence 40 feet East; thence 200 feet Southeasterly along  
the West boundary of Highway No. 130, being the true point of  
beginning;

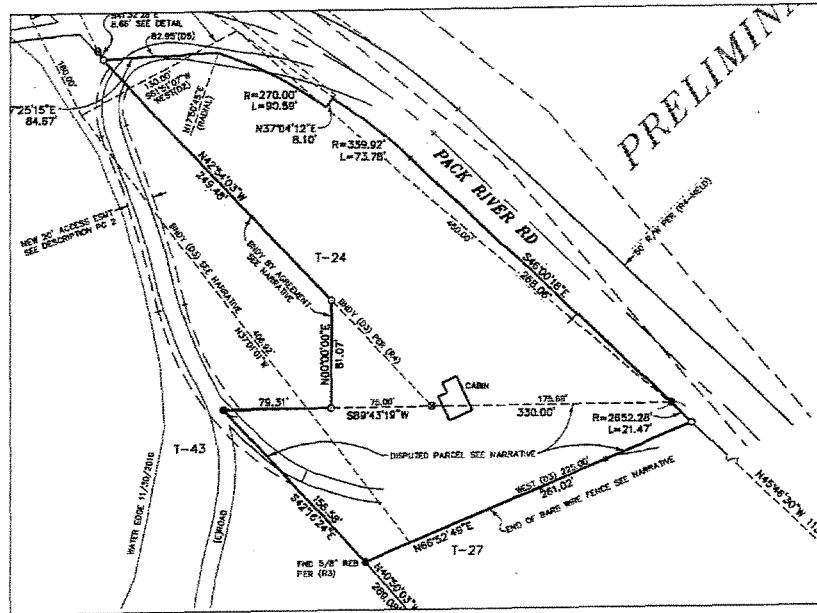
13 Thence 450 feet Southeasterly along the West boundary of  
14 Highway No. 130; thence 225 feet West; thence Northwesterly to a  
point 130 feet West of said Highway; thence 130 feet East to the  
true point of beginning.

15 Not only does the Court need to ignore the distance call to the point of beginning, but it  
16 must also ignore virtually all of the remaining calls in the Deed. According to Stratton, as set  
17 forth in his survey identifying the dimensions of the legal description, the Plaintiffs' parcel  
18 differs from the actual calls in the Deed as follows:

19

<b>Language in 1970 Quitclaim Deed</b>	<b>Dimensions of Parcel per Proposed Judgment</b>
20 Thence 450 feet Southeasterly along West boundary of Highway No. 130,	Thence 471.47 feet Southeasterly along the West boundary of the new Pack River Road,
21 Thence 225 feet West	Thence 261.02 feet traveling Southwesterly at N66°52'49"E
22	Thence 156.58 feet Northwesterly traveling at S42°16'24"E
23	Thence East 154.31 feet
24 Thence Northwesterly to a point 130 feet West of said Highway	Thence 358.65 feet Northwesterly traveling at N42°54'03"W
25 Thence 130 feet East to the true point of beginning	Thence East along a curve a distance of approximately 173.54 feet



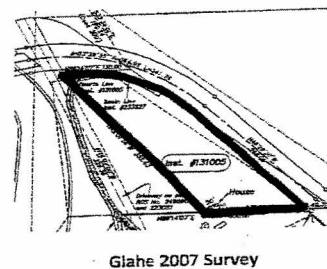
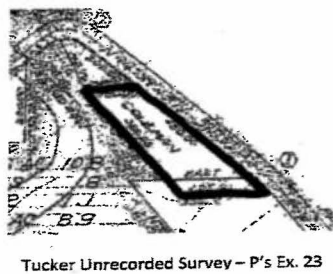
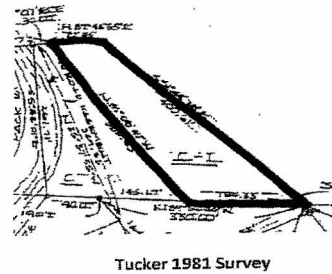
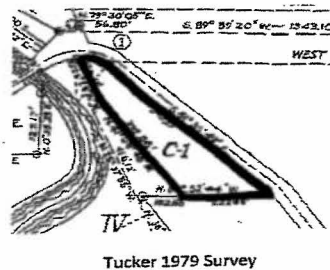


Consequently, if the Court accepts the proposed judgment as being the intent of Harry Clark as reflected by the 1970 quitclaim deed, then it must ignore virtually every call in the deed itself. Aside from the language in the deed drafted by Harry Clark, the only evidence as to Harry Clark's intent are the improvements which did not exist at the time that Harry Clark drafted the deed, and were not constructed by Harry Clark (i.e., the fence, driveway, parking area and cabin). The Plaintiff respectfully submits that the legal description contained within the proposed judgment cannot reflect the intent of Harry Clark, in light of the language contained in the deeds.

**D. The Legal Description Put Forth by the Plaintiffs Demonstrates that Harry Clark could not have Intended to Convey such an Oddly Shaped Parcel.**

The Bakers further contend that the Proposed Judgment would quiet title in a parcel of such bizarre dimensions as to refute a finding that such a conveyance was Harry Clark's intent. The Court found that because the Coleman deeds are ambiguous, the Court is free to consider parole evidence in an effort to determine what Harry Clark intended when conveying the parcels to Jean Coleman in 1966 and 1970. In support of its decision, the Court pointed to the

1 conflicting interpretations of the deeds by the various surveyors. Although the interpretations by  
2 the surveyors conflict as to certain distance and bearing calls, they were generally consistent with  
3 regard to the *shape* of the 1970 Coleman parcel – in that the Coleman parcel is a quadrilateral, or  
4 a quadrilateral with a slight curve.

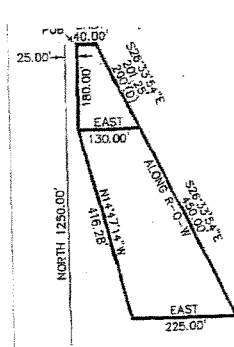


15 These interpretations as to the shape of the Coleman parcel comports with the legal  
16 description of the 1970 Coleman Parcel, as drafted by Harry Clark, which states, in relevant part:

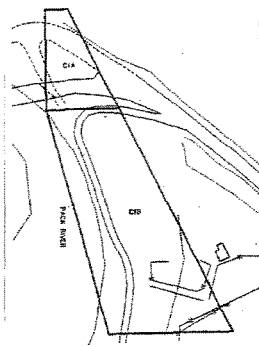
17 [From] the true point of beginning; thence 450 feet Southeasterly  
18 along the West Boundary of Highway No. 130; thence 225 feet  
19 West; thence Northwesterly to a point 130 feet West of said  
20 Highway; thence 130 feet East to the true point of beginning.

21 (D's Trial Exhibit F).

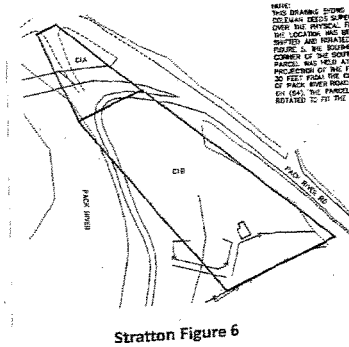
22 From this description, it is clear that Harry Clark intended the parcel to be a simple  
23 quadrilateral, with four corners. This has been confirmed by the Plaintiffs' expert, Robert  
24 Stratton, who provided at trial many interpretations of the Coleman deeds, all of which  
25 demonstrate clearly that the legal description drafted by Harry Clark in the 1970 deed conveys a  
four cornered quadrangle:



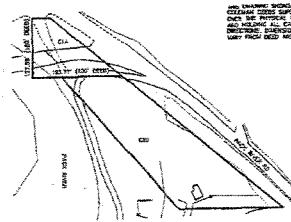
Stratton Figure 4



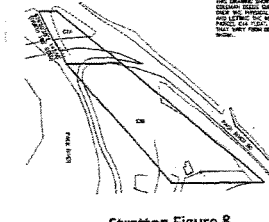
Stratton Figure 5



Stratton Figure 6



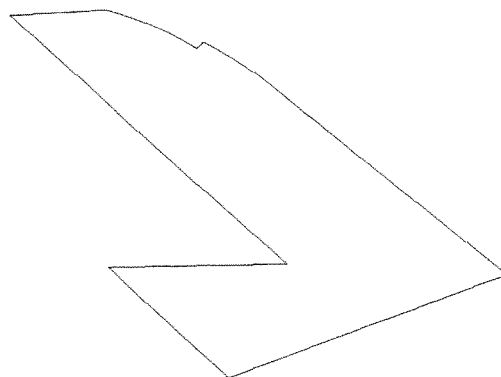
Stratton Figure 7



Stratton Figure 8

Even in Stratton's Figure 6, in which Stratton rotates the legal description by more than 23 degrees in order to fit the fence line, and which the Court found to be "the most reasonable interpretation of the Coleman deeds," Stratton's interpretation of the shape of the Coleman parcels is a simple four cornered quadrangle. The difference in this interpretation is that it is rotated counter-clockwise to match a fence line that did exist at the time the deed was drafted. It does not, however, drastically change the shape of the property so described.

According to the Proposed Judgment, however, as reflected on the Stratton Preliminary Survey, the shape of Coleman's parcel is not a quadrilateral, but is the following bizarre shape:



1 If the Proposed Judgment is accepted by the Court, it must be based upon the Court's  
2 finding that Harry Clark intended to convey this parcel of property to Jean Coleman. Yet,  
3 absolutely nothing in the language of the Coleman Deed gives any indication that such an oddly  
4 shaped property was being conveyed, and no evidence at trial was admitted which supports a  
5 finding that Harry Clark intended to convey a property of this description.

6 While it was undisputed that the Coleman Deeds contain ambiguous legal descriptions,  
7 **this finding does not allow the Court to completely ignore the language of the deeds, and**  
8 **draw from whole cloth an entirely new and factually unsupported boundary line.** The best  
9 evidence as to what Harry Clark intended to convey to Jean Coleman continues to be the legal  
10 descriptions that he drafted. Although there are discrepancies, this does not justify the Court  
11 ignoring virtually all of the distance and bearing calls in the deeds, and creating a parcel which is  
12 completely contrary to the parcel described in the deed.

13 With all due respect to the Court, it appears that the Court has chosen to quiet title in the  
14 Disputed Property based upon a fence line claim – boundary by acquiescence – without making  
15 the necessary findings of fact and conclusions of law to support such a ruling. Instead, the Court  
16 has ruled that, by a preponderance of the evidence, Harry Clark intended to convey up to a fence  
17 line that did not exist at the time of the conveyance, ignoring the actual calls in the deeds drafted  
18 by Clark, and even ignoring the Stratton survey that the Court found to be reasonable.

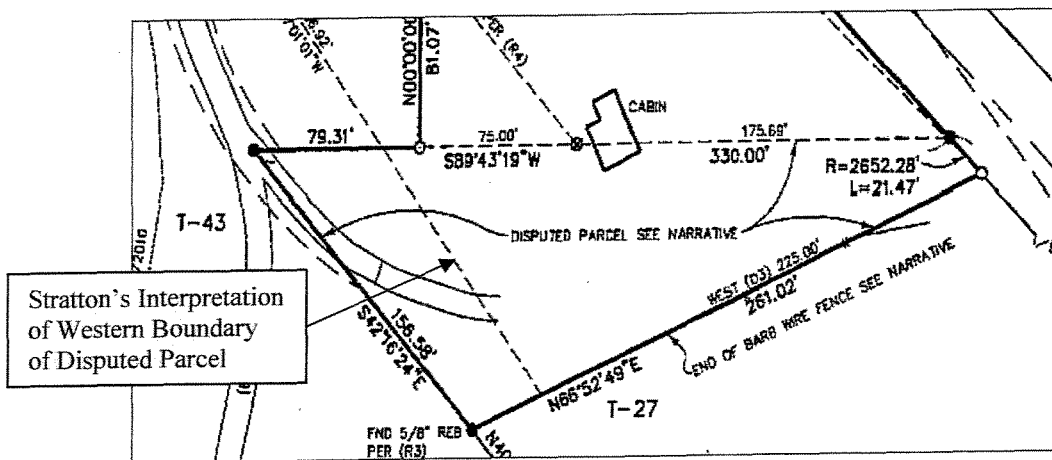
19 The Bakers object to the Proposed Judgment, as it does not reasonably reflect the intent of  
20 Harry Clark, or the findings of the Court.

21  
22 **E. The Legal Description Put Forth by the Plaintiffs Conveys far more Property than**  
23 **Described in Plaintiffs' Deed and Exceeds Even the Plaintiffs' Expert's Opinion.**

24 The legal description contained in the Plaintiffs' Proposed Judgment also reveals that the  
25 Plaintiffs are attempting to acquire more property than is supported by the Court's finding that

Harry Clark intended to convey property up to the fence line. By the plain language of the 1970 Quitclaim Deed from the Clarks to Jean Coleman, the Southern boundary line of the Coleman Parcel was to extend "225 feet West, thence Northwesterly to a point 130 feet West of said Highway." (D's Trial Exhibit F). Yet, in the legal description submitted by the Plaintiffs, the Southern boundary line extends 261.02 feet West, rather than 225 feet, and travels Northwesterly to a point which is 330 feet West of the Pack River Road, a full 200 feet more than is called for in the Coleman Deed drafted by Harry Clark.

In fact, Stratton's interpretation of the Coleman deeds at trial, as reflected by his Figure 6, shows that the Western boundary line of the Disputed Property is approximately 65 feet to the East of the legal description shown on the Proposed Judgment, as reflected by the dashed line on Stratton's Preliminary Survey.



For the Court to hold that it was Harry Clark's intent to convey up to the fence line, as reflected by Stratton's Figure 6, the Court must also hold the Western Boundary line of the Disputed Parcel according to Stratton's interpretation. Otherwise, the Plaintiffs acquire more property than even the Plaintiffs' expert indicates was reasonably intended by Harry Clark.

The Court made no findings as to the location of the Western Boundary of the Disputed Parcel, which by all accounts, has never been fenced. The Bakers submit that the Proposed

1 Judgment does not accurately reflect a reasonable interpretation of the Western Boundary of the  
2 Disputed Parcel.

3  
4 **III. CONCLUSION**

5 For the reasons state above, the Bakers submit that the Proposed Judgment submitted by  
6 the Plaintiffs does not reflect the decision of the Court, and should be rejected. The Court should  
7 make a finding as to the Western Boundary of the disputed parcel, and order the Plaintiffs to  
8 have a new survey performed, reflecting the land to the North of the 1970 fence line and  
9 consistent with the Court's finding as to the Western boundary.

10  
11  
12 DATED this 15<sup>th</sup> day of November, 2011.

13  
14 BERG & McLAUGHLIN, CHTD.

15 By: 

16 TOBY McLAUGHLIN  
17 Attorneys for Defendants Baker  
18  
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23  
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25

## CERTIFICATE OF SERVICE

On November 5, 2011, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

*Pro Se Plaintiff*

- ☐ By Hand Delivery
- ☒ By U.S. Mail
- ☐ By Overnight Mail
- ☐ By Facsimile Transmission
- ☐ Other

Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835

*Pro Se Plaintiff*

- ☐ By Hand Delivery
- ☒ By U.S. Mail
- ☐ By Overnight Mail
- ☐ By Facsimile Transmission
- ☐ Other

Jean L. Coleman  
12738 N. Strahorn Rd.  
Hayden, ID 83835

*Pro Se Plaintiff*

- ☐ By Hand Delivery
- ☒ By U.S. Mail
- ☐ By Overnight Mail
- ☐ By Facsimile Transmission
- ☐ Other

John Pandrea  
P.O. Box 1052  
Mountain View, HI 96771

*Pro Se Defendant*

- ☐ By Hand Delivery
- ☒ By U.S. Mail
- ☐ By Overnight Mail
- ☐ By Facsimile Transmission
- ☐ Other



Stephanie G. Allen

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2011 NOV 28 P 1:41

DAVID SCOTT  
CLERK DISTRICT COURT  
DEPUTY

Terri Boyd-Davis  
Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
*Plaintiffs In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS and BRIAN F.	)	Case No: CV2010-0703
DAVIS, husband and wife; and JEAN L.	)	
COLEMAN, an individual;	)	<b>PLAINTIFFS' OPPOSITION TO</b>
	)	<b>DEFENDANTS' MOTION FOR 54(b)</b>
Plaintiffs,	)	<b>CERTIFICATION</b>
	)	
v.	)	
	)	
MARY PANDREA, an individual;	)	
TIMOTHY BAKER and CAROL BAKER,	)	
husband and wife; JAMES GILBERTSON	)	
and NELLIE GILBERTSON, husband and	)	
wife; JOHN PANDREA, an individual;	)	
and DOES 1-50, inclusive;	)	
	)	
Defendants.	)	

**INTRODUCTION**

COME NOW Plaintiffs TERRI BOYD-DAVIS and BRIAN F. DAVIS ("Plaintiffs") and submit the following Opposition to Defendants' Motion for 54(b) Certification.

By certifying the Judgment on liability as final, Defendants would be able to immediately appeal this Court's judgment and, in their motion, they have stated their intent to do so. Once they have done so, the trial court would lose jurisdiction over the entire action, necessitating a delay of the second part of the trial on the issue of damages. This would delay justice in this matter for a number of reasons as explained in detail in this opposition.



Defendants fail to show that this case is the “infrequent harsh case” where injustice would result if an appeal were delayed. Quite simply, Defendants do not meet the standard for Rule 54(b) certification and, as such, Plaintiffs respectfully request that this Court deny Defendants’ motion.

### ARGUMENT

- A. It is proper to certify a partial judgment as final only “in the infrequent harsh case” in order to avoid a hardship or injustice which might result if an appeal were delayed until final disposition of the entire case. In that no such hardship or injustice would be suffered, a Rule 54(b) certification would be improper in this case.

In *Merchants, Inc. v. Intermountain Industries, Inc.*, 97 Idaho 890, 892, 556 P.2d 366, 368 (1976), the Idaho Supreme Court explained the policy behind Rule 54(b). It stated:

The policy issues at stake were elucidated in *Southland Produce Company v. Belson*, [96 Idaho 776, 536 P.2d 1126 (1975)]. We observed there that Rule 54(b) was adopted to overcome the ‘single judicial unit theory’ which *seriously inconvenienced persons* involved in multi-party or multiple claim actions by forcing them to await the adjudication of ‘the whole case and every matter in controversy in it’ before being allowed to appeal. This is the ‘affirmative aspect’ of Rule 54(b), which was designed to liberalize the appeals process.

But the Rule’s ‘negative aspect’-with its two express demands for a valid certification-is equally important. The rights of a litigant to a speedy appeal and to a clear-cut indication of when his right to appeal begins are not the sole policy considerations at stake. The court must also be concerned lest, as was said in *Southland Produce Company v. Belson*, *supra*, ‘... permitting an appeal from a partial summary judgment might produce several appeals some of which might be unnecessary.’

(Emphasis added).

In this case, although there were initially multiple parties, the only remaining parties are Defendants Bakers and the Plaintiffs. Although it was necessary for the Court to determine ownership of the Disputed Property before it could address the issues of trespass, timber trespass, and damages, now that title to the Disputed Property has been quieted in Plaintiffs, it is fitting that the Court proceed with the final stage of the litigation on these claims that are directly related to the ownership issue.

In *Pichon v. L. J. Broekemeier, Inc.*, 99 Idaho 598, 602, 586 P.2d 1042, 1046 (1978), the Idaho Supreme Court explained that “Idaho’s Rule 54(b) is patterned after the federal rule as it

Plaintiffs’ Opposition to Defendants’ Motion for 54(b) Certification

was amended in 1946." The Court explained the reasoning behind the implementation of that Rule as follows:

The Committee Note accompanying the 1946 amendment of the federal rule stated that *partial dispositions should be certified as final only "in the infrequent harsh case"* in order to avoid an injustice which might result if an appeal were delayed until final disposition of the entire case. *Except where an injustice would result from denial of an immediate appeal, Rule 54(b) was not intended to abrogate the general rule against piecemeal appeals.* The proper standard for determining whether to make Rule 54(b) certifications was stated by the late Judge Hastie of the Third Circuit. He said:

(O)rdinarily an application for a Rule 54(b) order requires the trial judge to exercise considered discretion, weighing the overall policy against piecemeal appeals against whatever exigencies the case at hand may present. Indeed, the draftsmen of this Rule have made explicit their thought that it would serve only to authorize "the exercise of a discretionary power to afford a remedy in the infrequent harsh case . . . ." 28 U.S. C.A., Federal Rules of Civil Procedure 118-119 note. It follows that 54(b) orders should not be entered routinely or as a courtesy or accommodation to counsel. The power which the Rule confers upon the trial judge should be used only "in the infrequent harsh case" as an instrument for the improved administration of justice and the more satisfactory disposition of litigation in the light of the public policy indicated by statute and rule.

(Emphasis added).

Defendants Bakers, in their request for Rule 54(b) certification, do not assert that they would be "seriously inconvenienced" should the Court deny their request. They do not present any argument that they would suffer injustice if the Court denied their request. They simply present argument that allowing an appeal at this time is, to them at least, "logical." As Plaintiffs argue herein, however, Plaintiffs would suffer additional hardship if the Court grants Defendants' motion. It would be unjust to Plaintiffs to prolong this process.

Additionally, permitting an appeal now on the issue of ownership would not avert an additional appeal from any judgment from the damages phase of the trial. As reasoned by the Supreme Court in the *Merchants, Inc.* case, permitting an appeal from this first phase "might produce several appeals some of which might be unnecessary."

This case simply does not meet the "infrequent harsh case" standard. The overall policy is against piecemeal appeals. As such, Defendants motion should be denied.

**Plaintiffs' Opposition to Defendants' Motion for 54(b) Certification**

- B. A delayed damage award would cause harm to Plaintiffs because interest accrues on a damages award once judgment has been entered, but if no judgment for damages can be made until an appeal process has been completed, plaintiffs could lose potentially two years or more of interest that would otherwise accrue during the appellate stage.

Plaintiffs have been damaged by Defendants' actions and should not be required to delay an award for the damages they have suffered until a later date, prolonging their ability to collect on an award of damages due to them. If judgment on damages is delayed until the appeal process is completed, which could easily be two years or longer, Plaintiffs will be prejudiced by not at least accruing interest on the judgment for damages to which they assert they are entitled but upon which they are unable to collect.

Idaho Code 28-22-104(2) provides that "The legal rate of interest on money due on the judgment of any competent court or tribunal shall be the rate of five percent (5%) plus the base rate in effect at the time of entry of the judgment." However, Plaintiffs are not entitled to pre-judgment interest on any damage award this Court may make. "It is settled law in Idaho that pre-judgment interest is available only when damages are liquidated or are ascertainable by mere mathematical process." *Bouten Const. Co. v. H.F. Magnuson Co.*, 133 Idaho 756, 762, 992 P.2d 751, 757 (1999). In the case of *Boel v. Stewart Title Guar. Co.*, 137 Idaho 9, 17, 43 P.3d 768, 776 (2002), although the Court found that the damaged party had "clearly suffered some amount of damages prior to the time they brought suit," because "the actual amount of damage was not ascertainable until the jury returned its verdict," the Supreme Court affirmed the district court's decision to deny the claim for pre-judgment interest.

Because plaintiffs have already suffered as a result of Defendants' actions over the past several years, they should be adequately compensated for the damages they have suffered. In delaying the collection of an award of damages due to them, they should at least be able to begin to accrue interest on such delayed award.

- C. Delaying the trial on the damages issue further prejudices Plaintiffs because such delay could result in two appeals, delaying the termination of this case for perhaps as long as four years or more.

In *Brinkmeyer v. Brinkmeyer*, 135 Idaho 596, 598, 21 P.3d 918, 921 (2001), the Idaho Supreme Court stated that "[t]he purpose of Rule 54(b) is to avoid piecemeal appeals."

Delaying the trial on the damages issue until after an appeal on the liability issue would further prejudice Plaintiffs because Defendants (or even Plaintiffs) could then appeal the judgment of the Court on the second stage of the trial as well. Such a situation would require two appeals, a process that could easily extend this process another four years or more and unnecessarily cost the Plaintiffs substantial extra costs and potential attorneys' fees for two appeals.

Based upon Defendants' apparent willingness and desire to litigate every possible issue and continually prolong this case, Plaintiffs believe the likelihood of Defendants pursuing a second appeal is great, if for no other reason than simply to prolong this process, cause Plaintiffs to spend additional money, and attempt to make their lives miserable. (Affidavit of Terri Boyd-Davis filed herewith, ¶ 2). Defendant Tim Baker warned Plaintiffs before this suit was even filed that he was "gonna take [them] for everything [they] got" and that he was "gonna f---in' drain [them]." He told them he was going to "make somebody's life miserable cause [he has] all the money." (Affidavit of Brian Davis filed herewith, ¶ 2)

It, therefore, makes more sense to commence the damages stage at this time, enter a final judgment for the entire case and, if an appeal is brought that the appeal be brought on any and all issues at once in a single appeal, thereby avoiding unnecessarily prolonging this case and wasting the resources of the courts.

- D. Because the parties were unaware of the Court's intent to bifurcate the trial until the day of trial, the parties had prepared to present evidence on damages at trial, which included hiring experts. By delaying the damages stage until after the appeal process would prejudice Plaintiffs because their expert's memory will have faded significantly by that time and there is no guarantee their expert will even still be available to testify at such unknown future time.

At the time of trial in March 2011, the parties were unaware that this would be a bifurcated trial. As such, Plaintiffs had prepared to present their entire case, including the damages stage. In the autumn of 2010, they hired an expert witness to assess the damage made by Defendants to their property. Their expert was prepared to present testimony on the damages to Plaintiffs' property during the trial in the spring of 2011. (Affidavit of Terri Boyd-Davis filed herewith, ¶ 3) If Defendants appeal this matter prior to the trial court hearing the damages stage, Plaintiffs will be prejudiced by virtue of the fact that should Defendants fail to prevail on appeal, which Plaintiffs believe is likely, then the trial on the damages stage would likely not commence

until at least 2014, after more than three years had passed since their expert viewed and assessed their damaged property. The more time that passes, the more his memory of the facts will have faded. Additionally, there is no guarantee that their expert will still be available to testify at such a late date in the future. At this point, and even more so years into the future, if the Plaintiffs were forced to obtain a different expert, it would not be possible to adequately assess the damages to Plaintiffs' property caused by Defendants' acts in March and April of 2010 when the Defendants engaged in the acts of erecting the chain link fence and tearing up their land. (Affidavit of Terri Boyd-Davis filed herewith, ¶ 4) It could, additionally, cause Plaintiffs to unnecessarily incur additional cost in procuring another expert witness.

E. Under Idaho Rules of Civil Procedure, the Court may direct entry of a final judgment ONLY upon an express determination that there is no just reason for delay.

I.R.C.P. 54(b) provides in pertinent part that:

[T]he court may direct the entry of a final judgment upon one or more but less than all of the claims or parties *only upon an express determination that there is no just reason for delay* and upon an express direction for the entry of the judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the actions as to any of the claims or parties.

(Emphasis added).

For the reasons presented in this opposition, Plaintiffs submit to this Court that to certify the judgment as final and to allow Defendants to pursue their appeal would be unjust and, thus, Plaintiffs do not believe it would be possible for the Court to make an express determination that there is no just reason for delay.

### SUMMARY

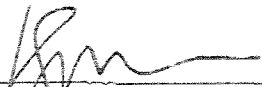
Defendants have shown by their words and their actions not only throughout this litigation but also prior to the commencement of this lawsuit, that they are intent on dragging this legal battle on as long as necessary. From the first time Plaintiffs encountered Defendant Tim Baker in the early autumn of 2008, he told them he was "going to make somebody's life miserable" and threatened to take their money. By certifying the partial judgment as final would effectively allow Defendants to continue their professed and unrelenting mission of at least

attempting to make Plaintiffs' lives miserable. Plaintiffs, on the other hand, desire to bring this matter to a close at the earliest opportunity.

This is not the "infrequent harsh case" where injustice would result if an appeal were delayed. The partial judgment does not warrant a Rule 54(b) certification. Plaintiffs look to the Court to consider not only how granting Defendants' motion would prejudice Plaintiffs but also to consider how allowing Defendants to continue their relentless attacks is a wasteful use of the resources of this state and county.

**WHEREFORE**, Plaintiffs pray this Court deny Defendants' request to certify the partial judgment as final.

DATED this 28<sup>th</sup> day of November 2011.

  
\_\_\_\_\_  
Terri Boyd-Davis

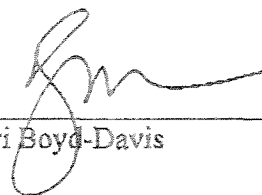
  
\_\_\_\_\_  
Brian Davis

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of November 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

### PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR 54(b) CERTIFICATION

<p>Toby McLaughlin Berg &amp; McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-263-7557</p>
<p>Jean Coleman 2902 N. 5<sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:</p>

  
\_\_\_\_\_  
Terri Boyd-Davis

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

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MADE/SCOTT  
CLERK DISTRICT COURT  
DEPUTY

Terri Boyd-Davis  
Brian F. Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
*Plaintiffs In Pro Se*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS and BRIAN F.	)	Case No: CV2010-0703
DAVIS, husband and wife; and JEAN L.	)	
COLEMAN, an individual;	)	<b>AFFIDAVIT OF BRIAN F. DAVIS</b>
	)	<b>IN SUPPORT OF PLAINTIFFS'</b>
Plaintiffs,	)	<b>OPPOSITION TO DEFENDANTS'</b>
	)	<b>MOTION FOR 54(b)</b>
v.	)	<b>CERTIFICATION</b>
	)	
MARY PANDREA, an individual;	)	
TIMOTHY BAKER and CAROL	)	
BAKER, husband and wife; JAMES	)	
GILBERTSON and NELLIE	)	
GILBERTSON, husband and wife; JOHN	)	
PANDREA, an individual; and DOES 1-	)	
50, inclusive;	)	
	)	
Defendants.	)	

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

I, Brian F. Davis, swear under oath that:

1. I am one of the Plaintiffs in this action. I am over the age of 18, have personal knowledge of the facts contained herein, and am competent to testify to these facts.

2. The first time I ever came into contact with Defendant Tim Baker was in early September 2008. At the time, I was on our property that has been in dispute in this

*Affidavit of Brian F. Davis*



case and was rebuilding the fence that Defendants had torn down. Tim Baker drove over to where I was working and harassed me and my friends who were helping me rebuild the fence. On that day, Tim Baker made the following threats. He stated, "I'm gonna take you for everything you got," and yelled, "You don't know who in the hell I am and I'm gonna make somebody's life miserable cause I have all the money...I'm gonna f---in' drain you." I recorded the threats he made and have previously provided this Court with a CD with that recording.

3. It seems obvious to me by the actions of Defendants Tim and Carol Baker that they are intent on dragging this legal battle on as long as necessary.


4. I would like to bring an end to this litigation and begin to enjoy our property in peace as we did before the Bakers purchased the property next door to ours.

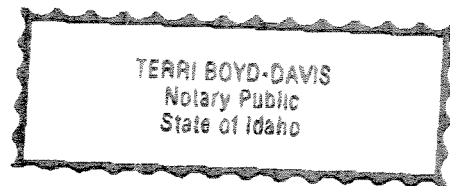
DATED this 28<sup>th</sup> day of Nov., 2011.



Brian F. Davis

Subscribed and Sworn to me  
this 28<sup>th</sup> day of November, 2011

  
NOTARY PUBLIC FOR Idaho  
Residing at: Hayden, ID  
My Commission Expires: 8-10-2015

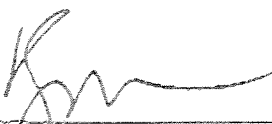


## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of November 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

### AFFIDAVIT OF BRIAN F. DAVIS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR 54(b) CERTIFICATION

Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-263-7557
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
\_\_\_\_\_  
Terri Boyd Davis

ORIGINAL

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
*Plaintiff In Pro Se*

2011 DEC -9 A 10:57

MAJOR CLERK  
CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS and BRIAN F.	)	Case No: CV2010-0703
DAVIS, husband and wife; and JEAN L.	)	
COLEMAN, an individual;	)	
	)	<b>PLAINTIFF TERRI BOYD-DAVIS'</b>
	)	<b>OPPOSITION TO DEFENDANTS</b>
Plaintiffs,	)	<b>GILBERTSONS' MOTION TO ENFORCE</b>
	)	<b>SETTLEMENT AGREEMENT AND</b>
v.	)	<b>RELEASE LIS PENDENS</b>
	)	
MARY PANDREA, an individual;	)	
TIMOTHY BAKER and CAROL BAKER,	)	
husband and wife; JAMES GILBERTSON	)	
and NELLIE GILBERTSON, husband and	)	
wife; JOHN PANDREA, an individual;	)	
and DOES 1-50, inclusive;	)	
	)	
Defendants.	)	

**INTRODUCTION**

COMES NOW Plaintiff TERRI BOYD-DAVIS ("Plaintiff") and submits the following Opposition to Defendants Gilbertsons' Motion to Enforce Settlement Agreement and Release Lis Pendens.

At the heart of this dispute is whether the terms of the Mediated Settlement Agreement ("MSA") reached in mediation between Plaintiffs and Defendants Gilbertsons have been met. Plaintiff contends they have not. There are a number of issues that need to be considered as follows: 1) Whether the documents executed by Defendant Nellie Gilbertson and recorded by Defendants' attorney, Toby McLaughlin on November 8, 2011 satisfy the terms of the MSA; 2) Whether Defendant Nellie Gilbertson, as the sole signator on the "conveyances" has the authority to convey the real property interests of her husband, Defendant James Gilbertson; 3)

**Plaintiff's Opposition to Motion to Enforce Settlement Agreement and Release Lis Pendens**

Whether the documents executed by Defendant Nellie Gilbertson effectively convey the property as agreed to in mediation; and 4) When is the appropriate time to release the lis pendens.

The issue of the removal of the lis pendens was first raised by Defendants Gilbertsons to Plaintiff Boyd-Davis on September 29, 2011. (*Affidavit of Terri Boyd-Davis*, ¶4 filed herewith). Because at that time, the terms of the MSA (i.e. the execution by the Gilbertsons and delivery to the Plaintiffs of two conveyances agreed to in mediation) had not yet been fulfilled by Defendants, Plaintiff did not agree to release the lis pendens. (*Id.* ¶20). During the month of October, Plaintiff and counsel for Defendants Gilbertsons attempted but failed to reach agreement on the wording of the conveyances and the legal descriptions to be contained in the conveyances. (*Id.* ¶7). On November 8, 2011 (the same day Defendants filed the instant motion), Defendant Nellie Gilbertson executed and her attorney recorded the purported conveyances. Plaintiff first received notice that they had been executed and recorded on November 14, 2011. (*Id.* ¶19).

Plaintiff Boyd-Davis contends that the recorded documents must effectively convey the property agreed to in mediation. Plaintiff contends the alleged conveyances are defective and that the terms of the MSA have, thereby, not been met. (*Id.* ¶¶15-16, 18-19).

The MSA did not specify when the lis pendens should be released. Plaintiff argues that Idaho law does not provide a specific time when a lis pendens should or must be released, but that Idaho case law suggests the proper time to do so is when the dispute concerning the real property has been resolved. In that the parties are in disagreement that the terms of the MSA have been met in that Plaintiff believes the conveyances are defective, it is apparent that the dispute between Plaintiffs and Defendants Gilbertsons has not been resolved. The removal of the lis pendens at this time would, therefore, be premature.

### **FACTS**

#### **A. Settlement Agreement reached in mediation between Plaintiffs and Defendants Gilbertson's.**

The terms of the settlement agreement reached between Plaintiffs and Defendants Gilbertsons in mediation are as follows:

- The parties were to sign a Stipulation for Dismissal, with prejudice, of all pending claims against one another and provide the Court with an Order for Dismissal.

This was to be done upon: 1) signature of the MSA by the parties; AND 2) the preparation and delivery of the deed and easements set forth in the agreement<sup>1</sup>. (¶ B of MSA);

- The Gilbertsons were to convey to Plaintiffs an easement for ingress and egress to Plaintiffs' property "thru, over and across the existing roadway *generally depicted* on [an exhibit attached to the agreement]." (¶ G of MSA);
- The Gilbertsons were to convey to Plaintiffs "a triangular portion of land . . . *generally depicted* upon [an exhibit attached to the agreement]." (¶ G of MSA); and
- The Plaintiffs were to obtain and pay for "such necessary survey and legal description" of the real property to be conveyed by the Gilbertsons. (¶ G of MSA).

(*Id.*, Exhibit 1).

The MSA did NOT provide:

- A timeframe in which the items contained in the agreement were to be completed; nor
- Any mention of removal of the lis pendens.

At the conclusion of mediation as the mediator, Charles Lempesis was hand-writing the language in the agreement to cement the terms agreed to by the parties, Plaintiff Boyd-Davis informed both the mediator and Defendants' attorney, Toby McLaughlin that she did not intend to have the survey and legal descriptions prepared until the issue of the property dispute with Defendants Bakers was also resolved because she did not want to have two surveys done. Mr. McLaughlin did not voice any objection to this plan. Release of the lis pendens was never discussed and no agreement concerning the lis pendens was reached in mediation. (*Id.* ¶3).

B. Release of Lis Pendens.

In the motion brought by Defendants Gilbertsons in this matter, they falsely assert that the "Plaintiffs have refused to release the lis pendens." This is untrue on two counts. First,

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<sup>1</sup> Defendants Gilbertsons and Plaintiffs executed a Stipulation for Dismissal and submitted an Order for Dismissal to the Court, which was entered by this Court on March 7, 2011. It turns out the parties filed these documents prematurely since it was prior to the preparation and delivery of the deed and easements.

“Plaintiffs” (plural) have not even been given a chance to refuse to release the lis pendens. Neither Defendants Gilbertsons nor their counsel have ever contacted two of the Plaintiffs, Brian Davis and Jean Coleman to discuss the issue of releasing the lis pendens. (*Id.* ¶5).

Although counsel for Defendants, Toby McLaughlin, asserts in his affidavit filed in support of the Defendants’ motion that “Plaintiff Terri Boyd Davis, on behalf of the Plaintiffs, has refused to . . . release the lis pendens,” this is a misrepresentation of the facts. Plaintiff Boyd-Davis did not inform Mr. McLaughlin that her communications were in any way “on behalf of [her co-plaintiffs].” She has only communicated with Mr. McLaughlin on the issue of releasing the lis pendens on her own behalf. (*Id.*).

Secondly, Plaintiff Boyd-Davis has not refused to release the lis pendens. In fact, in her communications with Mr. McLaughlin, Plaintiff Boyd-Davis explicitly agreed to release the lis pendens as soon as “the conveyances [agreed to in mediation] with proper legal descriptions are signed and recorded.” (*Id.* ¶20).

1. Preparation of legal descriptions for conveyance documents.

Defendants’ attorney first contacted Plaintiff Boyd-Davis to request releasing the lis pendens in an email he sent to her work dated September 29, 2011. (*Id.* ¶4). Because Boyd-Davis was out of the state, she did not receive the email until she returned to work on October 6, 2011. (*Id.* ¶6). In this email, Mr. McLaughlin stated:

I am working on getting the lis pendens that you previously filed removed from that portion of the Gilbertson’s property that the Gilbertson’s are going to retain, after transferring the triangle to you per the terms of the mediated settlement agreement. To this end, *I had Glahe & Associated (sic) draft a legal for the triangle* that you Brian and Jean will receive. Please review the partial release and let me know if it is acceptable. I will run it by a title company to make sure it does the trick.

(Emphasis added). (*Id.*, Exhibit 2).

As is apparent from Mr. McLaughlin’s first communication with Plaintiff on this issue, Defendants had unilaterally decided to have Glahe & Associates prepare the legal description although the MSA specifically provided that Plaintiffs were to do so. Defendant Nellie Gilbertson asserts in her affidavit filed in support of her motion that she was “forced to incur costs of a surveyor.” No such thing was forced on her. She chose to and did hire the surveyor before communicating with Plaintiffs on the issue.

**Plaintiff’s Opposition to Motion to Enforce Settlement Agreement and Release Lis Pendens**

Boyd-Davis responded to Mr. McLaughlin's email on October 6, informing him that she forwarded the legal description to her surveyor, Rob Stratton and that she was waiting to hear back from him. (*Id.* ¶6). In subsequent emails, Boyd-Davis informed Mr. McLaughlin that the legal description prepared by Glahe did not meet the approval of her surveyor but that her surveyor was working on his survey and legal descriptions. She informed him that she would provide those to him once they were completed. (*Id.* ¶7).

Plaintiffs' surveyor explained to her that he disagreed with the legal description provided by Glahe & Associates for the following reasons:

With regards to the description provided by Larry Glahe on September 28th, 2011, this description makes several references to inst. #131005. At one point in the description, it refers to 'also shown on the record of survey recorded at instrument no. 741564'. The word 'also' isn't adequate to show that the intent was to hold the boundary of inst. #131005 as shown on the survey. As we now know that this is not the boundary of inst. #131005, this description has conflicting calls. Every time it refers to this boundary, it needs to state 'the boundary of inst. #131005 as depicted on a record of survey recorded under inst. #741564'. Without this, the proposed description could be located in two different locations, one based on the Glahe survey and one further west based on inst. #131005.

(*Id.* ¶8).

2. *Attempt to resolve issue of boundary between Plaintiffs' and Defendants Gilbertson's property since no agreement on this issue had been reached in mediation.*

When Plaintiffs' surveyor, Rob Stratton began to work on the survey, he informed Plaintiff that an issue still remained, which was the location of the boundary between Plaintiffs' property on the west and the Gilbertson's on the east. (*Id.* ¶9). As became quite obvious during the trial in this matter, due at least partly to the ambiguous legal descriptions contained in the deeds at issue in this lawsuit, the boundary lines between the properties have been interpreted differently by various surveyors. Mr. Stratton suggested that it would be in the best interests of both the Plaintiffs and Defendants Gilbertsons to resolve the location of their common boundary so their agreement could be reflected in the survey and legal descriptions that he prepared. (*Id.*).

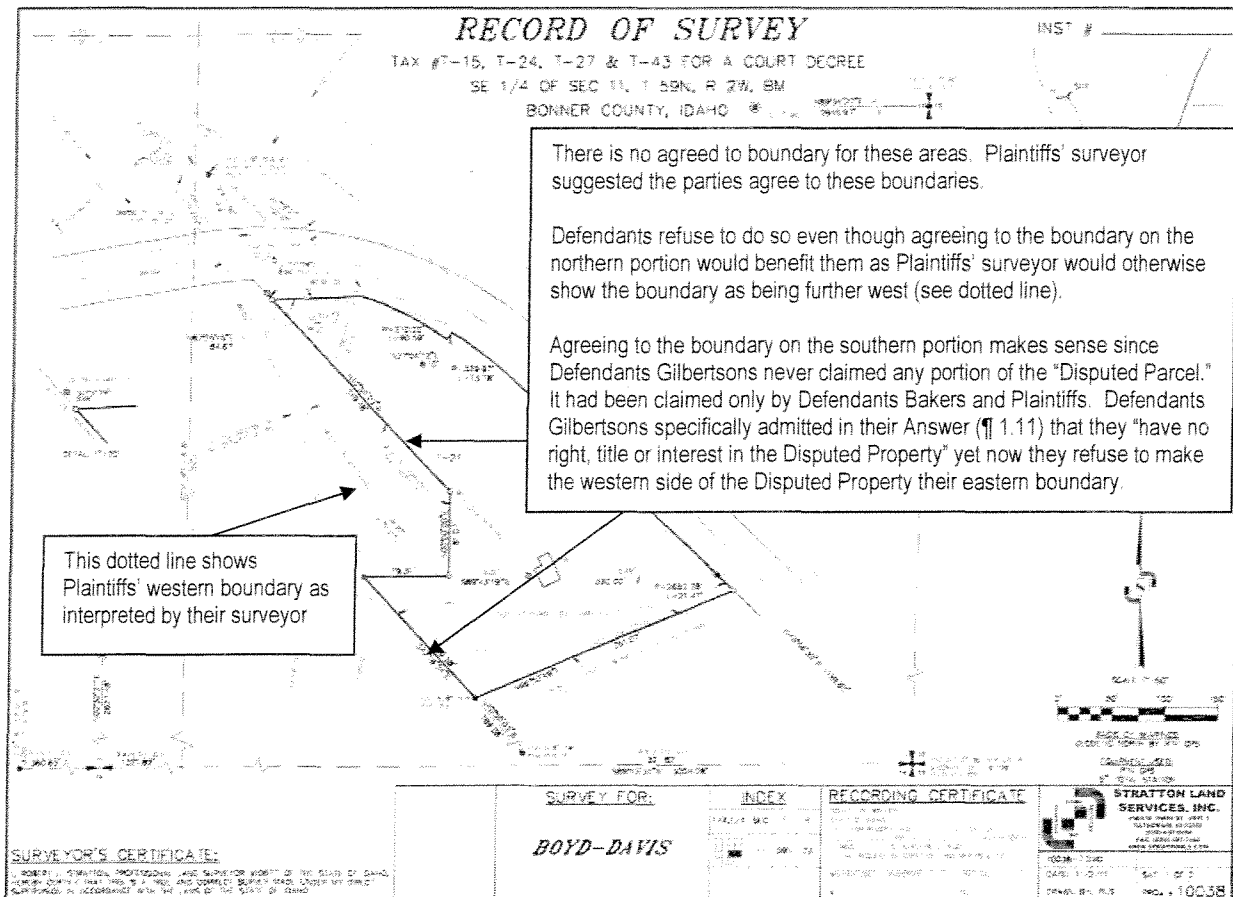
Although Mr. Stratton's interpretation of the Plaintiffs' deed is that their western boundary is somewhat further west than where the Glahe survey showed it to be, Plaintiff Boyd-Davis was willing to agree to the boundary as shown in the Glahe survey, which she considered

to be very generous to the Gilbertsons, in order to resolve the boundary issues completely. If the Gilbertsons also agreed to this, she was willing to discuss it with her fellow Plaintiffs to see if they also would agree. (*Id.* ¶10).

In order to agree to the boundary, Mr. Stratton explained to Plaintiff that it would be necessary for both the Plaintiffs and the Gilbertsons to execute quit claim deeds to each other, and he prepared legal descriptions for such purpose. In an October 31, 2011 email to Plaintiff, he stated:

This survey is preliminary and is based on the judgment and the quit claims between you and the Gilbertsons being completed as shown there on. This is not my interpretation of the deed. IF they do not sign the quit claim deed, we can modify the survey to something that is agreeable to both parties. If no one agrees, I would need to hold the line that is further west as that is my interpretation of the deed. Note that it should be in everyone's interest to clean up the entire boundary and not piecemeal it. If you or they only deed to a portion of the boundary, you really haven't solved the issue.

(*Id.* ¶9).





When Plaintiffs' surveyor completed his preliminary survey and legal descriptions, Plaintiff emailed them and forwarded a large copy of the survey by mail to Mr. McLaughlin on November 2, 2011. (*Id.* ¶11). She sent him a follow-up email on November 6, 2011 as follows:

I received Rob Stratton's preliminary survey late on Wednesday and wanted to get it to you as soon as I was able. Although I had perused it and discussed it with Rob prior to sending it to you, I did not get an opportunity to review it in detail until this weekend. When I did, I realized that Rob's narrative contained a section entitled "Agreed to Boundary Through Mediation." As you and I both know, there was no agreed to boundary through mediation. Thus, I am sending you this email to explain what is behind the "agreed to boundary" included in the narrative and to solicit the Gilbertson's thoughts on bringing closure to our yet unresolved boundary dispute. . . .

As you are well aware, there has been no agreement in mediation or otherwise between the Gilbertson's and us as to the location of our common boundary. It would seem to me that if we do not reach an agreement with the Gilbertson's, then, as Rob has warned, if we only deed to a portion of the boundary, we really haven't solved the issue. And, as you know, the court no longer has jurisdiction to decide this issue. . . .

So, what do the Gilbertson's want to do? These are the available options as I see it:

1. The Gilbertson's execute a quit claim deed wherein they convey the agreed-upon triangular section to us. Rob makes the necessary changes to his survey, including changing his dotted line to a heavy line to indicate where our western boundary is according to his interpretation of our deed. The outcome of this option would be that our boundary with the Gilbertson's would continue to be disputed and would continue to be unresolved.
2. Both we and the Gilbertson's agree to execute quit claims deeds to each other using the legal descriptions created by Rob as contained in his preliminary survey. In my opinion, on our part, we are being very generous offering this option to the Gilbertson's. The outcome of this option would be that the issue of our disputed boundary would be resolved and the lines would be held as shown on the preliminary survey.

To me, it seems most sensible to resolve all of the issues once and for all. In order to do so, it would be necessary to reach an agreement with the Gilbertson's. Please let me know which way the Gilbertson's would like to go so the legal descriptions and the survey can be finalized.

I know the Gilbertson's would like to get the lis pendens removed as soon as possible. Once you advise me what they would like to do, I will inform Rob so he can make final changes and then we can get the necessary documents executed and recorded and the lis pendens as to the Gilbertson's can be lifted.

(*Id.*).

On November 7, 2011, Mr. McLaughlin responded to Plaintiff's email stating, "I have discussed the issue with the Gilbertsons. They will not be signing any quit claim deeds, other than for the triangle agreed to at mediation." Plaintiff then informed him that she would have her surveyor revise the description. However, on November 8, 2011, Mr. McLaughlin informed Plaintiff in an email that there was "[n]o need to have [Plaintiffs' surveyor] prepare the legal for the triangle, Glahe already did it, and we will be filing a quit claim deed with that legal description." (*Id.* ¶12). Plaintiff then informed her surveyor to halt all work on the survey until after the Court made its ruling on the various motions brought by Defendants. (*Id.* ¶13).

C. Conveyances executed by Defendant Nellie Gilbertson and recorded with Bonner County Recorder's Office by Defendants' attorney, Toby McLaughlin.

On November 8, 2011, Defendant Nellie Gilbertson executed two documents, one entitled "Access Easement" and the other entitled "Quitclaim Deed." On that same day, Defendants' attorney, Toby McLaughlin recorded those documents with the Bonner County Recorder's Office and filed the instant motion. (*Id.* ¶14). The Defendants apparently believe the recording of these documents satisfies the terms of the MSA. Plaintiffs first became aware that these documents were executed and recorded when they received Defendants' motion and supporting affidavits on November 14, 2011. Plaintiff Boyd-Davis contends that these conveyances are deficient for a number of reasons. (*Id.* ¶¶15-16, 18-19).

The Access Easement purports to be an agreement between Defendants James and Nellie Gilbertson, as Grantors and Plaintiffs Terri Boyd-Davis, Brian Davis, and Jean Coleman, as Grantees. The agreement purports that the parties have agreed to a number of items. The fact is that Plaintiffs are not parties to this agreement and they did not sign this agreement. (*Id.* ¶15). In fact, Plaintiffs never saw this agreement until they received the copy attached to the Affidavit of Nellie Gilbertson filed in support of Defendants' motion. (*Id.* ¶14). Plaintiff Boyd-Davis notes that Nellie Gilbertson signed the agreement "as Power of Attorney" for her husband, James Gilbertson. The acknowledgement states that Nellie Gilbertson holds a "Durable Power of Attorney for Finance for James O. Gilbertson." (*Id.* ¶15).

Plaintiff has no knowledge as to whether Nellie Gilbertson holds a proper Power of Attorney for her husband, James Gilbertson, one that bestows upon her the power to convey his

real property interests. Plaintiff communicated her concerns with the recorded conveyances to Mr. McLaughlin by way of an email on November 17, 2011 as follows:

There are a number of issues I have with these documents you have apparently filed.

- First, Nellie's affidavit does not have the correct exhibits attached. Therefore, I did not receive a copy of the quitclaim deed that was apparently recorded (which was supposed to be attached as Exhibit A). The Exhibit C was also something other than what was identified in the affidavit. I would appreciate if you would provide me with correct copies of the exhibits.
- Secondly, I am utterly confused by the "Access Easement." This document purports to bind Brian, Jean, and me to an agreement to which we are not parties and did not sign. It also fails to provide our complete mailing address as the purported "Grantee" as required under I.C. 55-601. Please explain these deficiencies.
- Thirdly, I note that Nellie has signed the "Access Easement" on behalf of her husband as "Power of Attorney." I note that the acknowledgement states that she holds a "Durable Power of Attorney for Finance" for her husband. Does this document bestow on her the power to convey his interests in real property? Was the power of attorney recorded prior to recording the "Access Easement" and alleged Quitclaim Deed as required under I.C. 55-806? Please provide me with the Power of Attorney that was recorded so I know Nellie has this power. We need to ensure these are enforceable documents that are not voidable.

(*Id.* ¶16).

Mr. McLaughlin has provided NO response to Plaintiff's inquiry. (*Id.*) Plaintiff Boyd-Davis visited the Bonner County Recorder's Office on November 25, 2011 and confirmed that there has been no Power of Attorney recorded by James or Nellie Gilbertson. Because Mr. McLaughlin has refused to provide Plaintiff with a copy, she still does not know if Nellie Gilbertson has the power to convey her husband's real property interests. (*Id.* ¶17).

Plaintiff Boyd-Davis believes strongly that it is very important that no additional errors are made in regards to recorded documents pertaining to the property in dispute in this action. Sloppy work has plagued this property for decades and caused many of the problems Plaintiffs now face. To avoid similar future problems, she is attempting to make sure it is done right. It is for this reason that she has relied on the expertise of her surveyor. Defendants' attorney, on the other hand, has tried to rush this process and has pressured Plaintiff, apparently unconcerned that it is done in a proper manner. (*Id.* ¶18).

**Plaintiff's Opposition to Motion to Enforce Settlement Agreement and Release Lis Pendens**

Because Mr. McLaughlin unilaterally chose to record the Quit Claim Deed with the legal description prepared by Defendants' surveyor rather than Plaintiffs' surveyor pursuant to the terms of the MSA, Plaintiff is not agreeable to removing the lis pendens until this is corrected and a proper Quit Claim Deed with an appropriate legal description is recorded. (*Id.* ¶19).

Although Defendants attempt to portray Plaintiff Boyd-Davis' refusal to remove the lis pendens as unreasonable or somehow as an attempt to interfere with their ability to refinance their property, this is patently false. (*Id.* ¶20). Plaintiff Boyd-Davis submits to this Court that it is the actions of the Defendants that have been unreasonable and caused ongoing and unnecessary litigation of issues that should be able to resolve themselves without the necessity of court intervention.

### **ARGUMENT**

Defendants Gilbertsons have cited to no authority to support their demand that this Court order Plaintiffs to remove the lis pendens or award them attorney's fees and costs incurred in bringing their motion.

Plaintiff asserts that until Defendants Gilbertsons execute conveyances which effectively convey the property agreed to in mediation that this dispute is not resolved. Plaintiff further asserts that a release of the lis pendens as to the Gilbertsons before proper conveyances are executed would be premature.

- A. Idaho law does not provide a definitive time period in which a lis pendens must be removed but case law suggests that removal is proper when the dispute over the property rights has been resolved.

Idaho Code § 5-505 provides:

In an action affecting the title or the right of possession of real property, the plaintiff at the time of filing the complaint, and the defendant at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterward, may file for record with the recorder of the county in which the property or some part thereof is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

Nowhere in Idaho statutes is there any provision for when a lis pendens must be released.

There is also no case law in Idaho that provides definitive direction as to when a lis pendens

must be released. Case law does, however, provide insight as to when it may be appropriate to release a lis pendens.

In the Idaho Court of Appeals case of *Jerry J. Joseph C.L.U. Ins. Associates, Inc. v. Vaught*, 117 Idaho 555, 789 P.2d 1146 (1990), the Court stated that “[a] lis pendens is a notice to the world of the existence of a claim affecting certain real property.” *Id.* at 557, 1148. The Court stated that:

The lis pendens does not purport, by itself, to establish or to change anyone’s legal rights. Of course, the filing of a lis pendens may highlight a possible legal problem affecting the property, thereby inducing an extra measure of caution by potential purchasers or lenders until the litigation is concluded. But this does not mean that any underlying legal rights have been altered. By parity of reasoning, *the removal of a lis pendens, as the result of a settlement or judgment, has no effect on legal rights. It simply is a signal that a dispute over those rights has been resolved.*

*Id.* at 557-558, 1148-1149. (Emphasis added).

Although in the cited case, the Court of Appeals did not specifically address the question of when a lis pendens must be removed, we can draw from the reasoning of the Court that the proper time to remove the lis pendens is when “a dispute over the real property rights has been resolved.” To remove it prior to that time would, in fact, give the wrong signal to potential purchasers or lenders.

In our case, although the dispute is seemingly over in that an agreement between the parties has been reached, because the parties disagree over how their agreement will be effectively fulfilled, the dispute actually is not yet over. Indeed, there would be no need for the parties to argue this issue before the court if the dispute had been resolved.

The Idaho U.S. District Court case of *Mortensen v. Deissner*, CV 08-369-N-CWD (IDDC) (2009) devotes an entire segment of its decision to “Idaho Law Concerning Lis Pendens.” It states in part:

As early as 1877, the Supreme Court held that a lis pendens simply imparts notice to a purchaser such that the purchaser acquires his interest subject to the outcome of the pending action involving the real property. *County of Warren v. Marcy*, 97 U.S. 96, 106 (1877) (“a lis pendens, duly prosecuted, and not collusive, is notice to a purchaser so as to affect and bind his interest by the decree.”).

... What can this Court therefore conclude? Idaho courts have not decided whether the recording of a lis pendens can form the basis for an abuse of process claim. However, Idaho law is strikingly similar to Alaska’s law. Idaho regards a

notice of lis pendens as mere notice. The recording of such a notice does not invoke the use of any judicial process. Nor can the recording of a notice of lis pendens form the basis for the similar tort of slander of title. And the removal of a lis pendens does not entitle a property owner to an award of attorney fees as a prevailing party for his or her “success” in having the lis pendens extinguished. Indeed, no legal rights are affected at all by the recording of a notice of lis pendens, as it simply binds a third party purchaser to the outcome of the underlying action disputing ownership or other rights asserted in real property. The property subject to a notice of lis pendens may still be transferred to others in spite of the lis pendens.

Thus, because the purpose of a lis pendens is to provide notice to a purchaser such that the purchaser acquires his interest subject to the outcome of the pending action involving the real property, in our case, removing the lis pendens prior to the time the agreed to and properly prepared conveyances agreed to in mediation have been recorded would send the wrong notice to “the world.”

In their motion, Defendants claim that “[t]he Plaintiffs have refused to release the lis pendens, even though their claims against the Gilbertsons were dismissed more than six months ago.” They seemingly assert that the lis pendens must be released on account of the fact that an Order for Dismissal has already entered by this Court. However, they provide no legal basis for this assertion.

Interestingly, in the *Mortensen* case, the plaintiff argued that the defendant had “abused” the lis pendens process because in that case there was no underlying action affecting title. The District Court found, however, that because “there was an underlying dispute” at the time the lis pendens were recorded, in that the defendant was challenging the divorce decree which vested title in the properties in the plaintiff, that the recording of the lis pendens on the property was not improper. In that case, at the time the defendant recorded the lis pendens, she had not yet filed a motion to reopen the divorce proceedings. In that case, the court did not find there had been an abuse of the lis pendens process because, although there was no underlying action, there was an underlying dispute. This is similar to our case where the underlying action, as it concerns Plaintiffs’ claims against Defendants Gilbertsons and Defendants Gilbertsons’ claims against Plaintiffs, has been dismissed yet the dispute continues.

- B. Defendants Gilbertson's must execute and record proper conveyances with adequate legal descriptions before a determination can be made that this dispute is resolved.

The initiation of this lawsuit was largely due to the fact that the legal descriptions contained in deeds recorded decades ago were imprecise, causing present confusion over ownership rights. Idaho law requires that "[a] judgment which affects the title or interest in real property . . . describe the lands specifically and with such certainty . . . such that rights and liabilities are clearly fixed and that all parties affected thereby may readily understand and comply with the requirements thereof." *Sinnett v. Werelus*, 83 Idaho 514, 524, 365 P.2d 952, 962 (1961). While the agreement reached between the parties in mediation is not the same as a judgment, the necessity for specific, proper legal descriptions of the property to be conveyed between the parties should be apparent.

For the reasons outlined in paragraph B(1) above, the legal description prepared by Defendants' surveyor is not sufficient. As Plaintiffs' surveyor explained, "the proposed description could be located in two different locations, one based on the Glahe survey and one further west based on inst. #131005." This is problematic and needs to be corrected.

It is also essential that the issue is resolved of whether Defendant Nellie Gilbertson possesses the power to convey her husband's real property interests. Defendants have failed to properly abide by Idaho law in making their conveyances. Defendant Nellie Gilbertson signed both "conveyances" as attorney-in-fact for her husband, James Gilbertson but, contrary to Idaho law, she did not first record the power of attorney authorizing the execution of the instrument. Idaho Code § 55-806 states that "[a]n instrument executed by an attorney in fact *must not be recorded* until the power of attorney authorizing the execution of the instrument is filed for record in the same office." (Emphasis added). Although Plaintiff has requested that Defendants' attorney provide her with a copy of the Power of Attorney, he has refused to do so.

Without knowing whether the Power of Attorney that Defendant Nellie Gilbertson holds authorizes her to convey her husband's real property interests, Plaintiff cannot be certain that the recorded conveyances are valid or whether they may be voidable.

Idaho Code § 32-912 provides that:

Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract,

*except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing the sale agreement, deed or other instrument of conveyance by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal. All deeds, conveyances, bills of sale, or evidences of debt heretofore made in conformity herewith are hereby validated.*

(Emphasis added).

The case of *Lovell v. Sword*, 140 Idaho 105, 90 P.3d 330 (2004) concerned a real property transaction wherein the husband, without the consent of his wife, agreed to sell their jointly-owned real property to another party. The district court had found the purported purchasers of the property were entitled to enforcement of a land sale contract but the Supreme Court reversed that decision on appeal. In discussion of its decision, the Court stated:

It is undisputed that the land at issue was the Lovell's community property at the time Mr. Lovell dealt with the Swords. It is also undisputed that Mrs. Lovell did not give her written consent to the sale of the community property. Therefore, the Lovells argue that the oral contract is void under I.C. § 32-912 since Mr. Lovell could not sell, convey or encumber the Lovell's community property without the written consent of Mrs. Lovell.

I.C. 32-912 [1] provides the general rule that an attempted conveyance of community real estate by one spouse, without the written consent of the other, is void. See I.C. § 32-912; *Fuchs v. Lloyd*, 80 Idaho 114, 120, 326 P.2d 381, 384 (1958) (citations omitted).

*Id.* at 108-109, 333-334.

In the same way, in our case, if Nellie Gilbertson does not have a proper Power of Attorney that allows her to convey her husband's real property interests, we could find that the "conveyances" recorded by her are void. This is not a risk this Plaintiff wishes to take.

### **CONCLUSION**

If the lis pendens is released prior to the conclusion of this dispute, there are at least two potential problems that could result. First, potential purchasers or lenders would be unaware that there is a yet unresolved legal problem with the property. Secondly, Defendants would have no incentive to ensure they execute documents that properly and effectively convey the property as they had agreed to in mediation. It should be apparent to the parties involved in this litigation

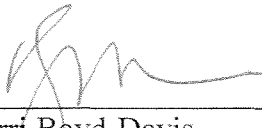


and the Court as well that making sure the "I"s are dotted and the "T"s are crossed when it comes to these properties is necessary.

**WHEREFORE**, Plaintiff TERRI BOYD-DAVIS prays this Court deny Defendants' motion and instead enforce the Mediated Settlement Agreement by requiring that, prior to Plaintiffs releasing the lis pendens, Defendants Gilbertsons execute properly signed conveyances with proper legal descriptions of the property prepared by Plaintiffs' surveyor.

Respectfully submitted,

DATED this 8<sup>th</sup> day of December 2011.

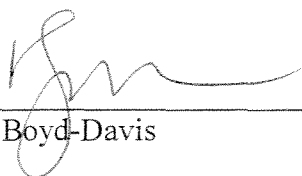
  
\_\_\_\_\_  
Terri Boyd-Davis

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8<sup>th</sup> day of December, 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

**PLAINTIFF TERRI BOYD-DAVIS' OPPOSITION TO  
DEFENDANTS GILBERTSONS' MOTION TO  
ENFORCE SETTLEMENT AGREEMENT AND RELEASE LIS PENDENS**

Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> <b>Facsimile: 208-263-7557</b>
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
\_\_\_\_\_  
Terri Boyd-Davis

Terri Boyd-Davis  
12738 N. Strahorn Rd.  
Hayden, ID 83835  
Telephone: 208-659-5967  
*Plaintiff In Pro Se*

STATE OF IDAHO  
COUNTY OF BONNER  
DISTRICT JUDICIAL DIST.

2011 DEC 28 A 9:56  
JAMES SCOTT  
CLERK DISTRICT COURT  
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

TERRI BOYD-DAVIS, et al.;	)	Case No: CV2010-0703
	)	
Plaintiffs,	)	
	)	<b>PLAINTIFF TERRI BOYD-DAVIS'</b>
v.	)	<b>RESPONSE TO DEFENDANTS BAKERS'</b>
	)	<b>OBJECTION TO PLAINTIFFS'</b>
MARY PANDREA, et al.;	)	<b>PROPOSED JUDGMENT</b>
	)	
Defendants.	)	

**INTRODUCTION**

COMES NOW Plaintiff TERRI BOYD-DAVIS and submits the following Response to Defendants Bakers' Objection to Plaintiffs' Proposed Judgment.

Defendants' Objection to Plaintiffs' Proposed Judgment is in large part nothing more than a second motion for reconsideration. To the extent that Defendants and/or Defendants' counsel insist on ignoring the procedural rules and rehashing their arguments already considered and rejected by this Court, their attempts to do so defeat the purpose of Idaho Rules of Civil Procedure. This Plaintiff has been forced to waste her time responding to the bogus objection. Defendants' arguments should be ignored by this Court and sanctions should be assessed against them for causing unnecessary delay and needless increase in the cost of litigation.

**A. Defendants should be sanctioned for abusing this Court's and the Plaintiffs' time and resources by bringing a second motion for reconsideration that they have disguised as an "objection" to the proposed judgment.**

**1. Defendants have already brought a motion for reconsideration.**

On May 12, 2011, Defendants Bakers filed their motion for reconsideration of the trial decision in this matter along with a 12-page memorandum in support of their arguments. On September 2, 2011, the Court entered its 12-page Decision Re: Bakers' Motion for Clarification and Reconsideration, wherein the Court confirmed its findings that it was the intent of the

grantor, Harry Clark, to convey the Disputed Property to the Plaintiffs. The Court ordered the Plaintiffs to "conduct a survey consistent with the trial decision quieting title in the disputed property to them so that a proper legal description can be created and included in an appropriate judgment." The Court ordered that such survey and description be completed and delivered to the court and opposing counsel, along with a proposed judgment, no later than November 4, 2011. Plaintiffs submitted their proposed judgment along with their preliminary survey and legal descriptions to the Court and opposing counsel by the Court's deadline.

## 2. Defendants' Objection to Proposed Judgment.

On November 15, 2011, Defendants Bakers filed their 11-page Objection to Plaintiffs' Proposed Judgment. Although clothed as an "objection," much of it is nothing more than another motion for reconsideration, wherein they ask this Court to once again reconsider the ruling it has already made and has already reconsidered. Defendants attack the survey and legal description prepared by Plaintiffs' surveyor by claiming such survey "ignores nearly all of the calls in the Coleman deed." The surveyor, however, simply followed the order of the Court in preparing a legal description and survey in keeping with the property determined by the Court to be the Plaintiffs. Thus, Defendants' battle is not with the surveyor's work but is, rather, with the Court's ruling.

Defendants make it clear that their dispute is with the Court's ruling where on page 9 of their "objection," they state:

While it was undisputed that the Coleman Deeds contain ambiguous legal descriptions, **this finding does not allow the Court to completely ignore the language of the deeds, and draw from whole cloth an entirely new and factually unsupported boundary line.** The best evidence as to what Harry Clark intended to convey to Jean Coleman continues to be the legal descriptions that he drafted. Although there are discrepancies, this does not justify the Court ignoring virtually all of the distance and bearing calls in the deeds, and creating a parcel which is completely contrary to the parcel described in the deed.

(Emphasis theirs.)

## 3. Defendants must follow the Court's procedural rules

Although the Defendants are obviously unhappy with the Court's ruling, they must follow the procedures put in place for aggrieved parties. To allow the Defendants to make their own rules and proceed without regard to established rules defeats the very purpose of the rules and wastes the Court's resources and Plaintiffs' time. The Court announced its findings from the trial on April 28, 2011, over eight months ago. The Court has already considered and rejected

Defendants' motion for reconsideration. Defendants' unauthorized actions must cease so this litigation can come to a close.

Idaho Code of Civil Procedure Rule 1(a) explains the scope of the rules in pertinent part as follows:

*These rules govern the procedure and apply uniformly in the district courts . . . in the state of Idaho in all actions, proceedings and appeals of a civil nature whether cognizable as cases at law or in equity . . . These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding.*

(Emphasis added.)

In their obvious unhappiness with the Court's decision, Defendants continuously prolong this case. While they have every right to do so within the constraints of Idaho law and rules, when they attempt to do so outside the rules, such as how they have done in their "objection" wherein they again ask the court to reconsider its decision, they defeat the purpose of Idaho's Rules of Civil Procedure, which is "to secure the just, speedy and inexpensive determination of every action and proceeding."

4. Defendants and their counsel should be sanctioned for bringing their unauthorized motion that is not warranted by the rules.

Idaho Rule of Civil Procedure 11(a)(1) provides in pertinent part:

*The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law . . . and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.*

(Emphasis added.)

The Rule goes on to provide that "[i]f a pleading, motion or other paper is signed in violation of this rule, the court . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction." Although Defendants entitled their second motion for reconsideration as an "objection," its contents reveal what it really is. I.R.C.P. 11 provides that the court shall impose an appropriate sanction when an attorney signs a paper that is not warranted by existing law and that is brought for an improper purpose, such as to cause unnecessary delay or needlessly increase the cost of litigation. Defendants and their counsel should be sanctioned for causing Plaintiffs and this Court to expend their time unnecessarily in responding to this motion.

**B. Plaintiff's Response to Defendants' Objections.**

1. The survey and legal descriptions provided by Plaintiffs' surveyor properly delineate the southern boundary of the Disputed Parcel pursuant to the Court's ruling.

In Plaintiffs' Complaint, Plaintiffs claimed ownership of the property identified as the "Disputed Property." They clearly identified that the property they claimed (i.e. the "Disputed Property") was the triangular parcel of property north of the "Existing Fence Line" shown on the Baker Survey.

In paragraph 7 of their Complaint, they stated that "the south boundary" of their property was the "north boundary of the Baker Property." They stated that "[a] fence has divided the boundary continuously since at least 1970." They labeled this line as the "1970 Fence Line." To clearly point out the line to which they referred, they stated "see 'Existing Fence Line' designated in the Record of Survey for Tim Baker recorded on November 26, 2007 as Instrument No. 741564 in Bonner County, State of Idaho, attached hereto as Exhibit 'D'." On Plaintiffs' Exhibit "D" a bold line was drawn around the triangular parcel of land they claimed. The bold line on the southern portion of the triangular parcel was drawn along the "Existing Fence Line" and the bold line continued in a straight line past where the fence ended on the east side to the eastern boundary. An arrow pointed to the parcel identifying it as "Disputed Parcel." Obviously, what the Plaintiffs referred to as "1970 Fence Line" is the "Existing Fence Line" from the Baker Survey.

In their objection to Plaintiffs' Proposed Judgment, Defendants Bakers state that "the legal description and preliminary survey put forth by the Plaintiffs . . . conveys property not to the 1970 fence line, but to an arbitrary line unsupported by the evidence or the Court's trial decision." They state that "[t]he Southern Boundary of the legal description . . . is a straight line that does not follow the *old fence line*." (emphasis added). They state that "[t]he issue turns on the definition of 'the Disputed Property.'"

This Plaintiff finds Defendants feigned confusion disingenuous. She does not believe that anyone is confused as to the location of the "Disputed Property." Defendants are attempting to create confusion by adding words that were not contained in the Plaintiffs' Complaint or in the Court's Order quieting title in the Disputed Property to the Plaintiffs.

In their objection, Defendants purposefully added a word not contained in the Plaintiffs' Complaint wherein they described the "Disputed Parcel." This additional word conveniently changes the description in an apparent attempt to create confusion. They state that paragraph 7

of Plaintiffs' Complaint "defined the '1970 Fence Line' as [a] fence [which] has divided the boundary continuously since at least 1970." (Emphasis added). Defendants added the word "which" to the language used by the Plaintiffs in their Complaint. By adding "which," it changes the meaning so that it appears that Plaintiffs were referring to a specific fence. Plaintiffs merely stated that "a" fence continually divided the properties. They did not assert that it was one fence that never changed. In fact, as this Court determined during trial, "a" fence has continuously divided the properties for the past 40+ years. However, there have been at least two fences on the fence line. The wooden fence was replaced with a metal fence at some point.

When the Defendants then state that "[t]he Southern Boundary of the legal description... is a straight line that does not follow the *old fence line*," (emphasis added), they are again adding confusion to the Court's order. The Court's Order stated simply that "[t]itle to the disputed parcel of real property involved in this lawsuit is quieted in the plaintiffs." There was never any mention of an "old fence line" in the Court's Order or in the Plaintiffs' description of the "Disputed Property."

The fact is that Stratton's preliminary survey depicts the southern boundary of the Disputed Property along the "Existing Fence Line." In his "Surveyor's Narrative," which is a part of the preliminary survey, is a section entitled "Fence Determination." Mr. Stratton notes:

Currently, a barbed wire fence exists across a portion of the southerly boundary of the disputed parcel. It appears that the westerly portion of this fence was recently removed. There was also evidence of an older wooden fence that appeared to be south of the barbed wire fence a foot or two but I did not find enough evidence to confirm its location. I found a monument set [by the Tucker 1981 survey] that I accepted as evidence of the location of the fence on the westerly boundary of [the 1976 deed from Clark to Johnson]. This appears to agree with the fence location shown on [the 2007 Baker Survey]. The boundary line shown on this survey held this monument on the westerly end and a fence post from the barbed wire fence near the east end of the fence before it jogs southerly. This fits the barbed wire fence line where I located it within one foot (the fence has some minor variation in alignment).

At trial, Clifford Johnson, the Bakers' predecessor, testified that he had built the wooden fence and that he later replaced it with the barbed wire fence. He testified that he had built the metal fence in the same location as the wooden fence. Thus, this is a non-issue.

The Defendants are correct that Stratton's survey "does not . . . follow the arbitrary dashed line as shown on the Baker Survey." They note that the southern boundary is at least four feet to the south of where the dashed line was shown on the Baker Survey, noting that it is 16.81

feet on the Baker Survey and 21.47 on Stratton's preliminary survey. The discrepancy is a result of the fact that Stratton followed the "existing fence line," which is at a slightly different angle than the dashed line on the Baker Survey. He continued the line to the eastern boundary of the property, following the angle of the "existing fence line."

Defendants' argument on this point appears to be nothing other than an attempt to confuse the Court and waste its time.

2. The very minor "inaccuracies" contained in Stratton's preliminary survey can be and will be rectified prior to completion of the final survey. These "inaccuracies" did not require the Defendants to file a formal objection with the Court since the parties had already discussed them and Defendants had been informed that they would be corrected in the final survey.

Defendants again waste the Plaintiffs' and this Court's time with their argument that the Stratton preliminary survey contains inaccuracies. Plaintiff Boyd-Davis and Defendants' counsel have had extensive communications on these issues. The Plaintiff has informed Defendants' counsel that the "inaccuracies" will be corrected in the final survey.

- a) Surveyor's inadvertent use of the phrase "Southeast Corner" when he meant "Southeast Quarter."

Defendants point out that Plaintiffs' surveyor inadvertently used the phrase "Southeast Corner" when he intended to use "Southeast Quarter." These discrepancies were brought to the attention of this Plaintiff by Defendants' counsel. Plaintiffs' surveyor has been alerted to the error, and he has indicated that he will correct it before he completes his final survey.

- b) Defendants Bakers raise an issue related to the mediation agreement reached between Plaintiffs and Defendants Gilbertsons, which the Court does not have jurisdiction to consider, and to which Plaintiffs, therefore, decline to provide a response.

Despite the fact that the Court has no jurisdiction to address issues related to the mediation agreement reached between the Plaintiffs and Defendants Gilbertsons since those parties have dismissed their claims against each other, Defendants Bakers in their purported "objection" nevertheless waste the Court's time by asking the Court to consider these issues. Since the Court has no jurisdiction, Plaintiff declines to waste her time and the Court's by addressing these issues in her response.

3. Defendants' arguments claiming that the Stratton Survey ignores calls in the Coleman Deed is simply an attempt by Defendants to bring a second motion for reconsideration before this Court.



"A rose by any other name would smell as sweet." And a motion for reconsideration called an objection is still a motion for reconsideration. It is apparent that when the Defendants claim that "the legal description contained in the Proposed Judgment cannot reasonably reflect the intent of Harry Clark," they are doing nothing more than arguing yet again their previously-made points as to why they disagree with and reject the findings of the Court.

Since the Defendants have done so improperly and their doing so wastes the Plaintiffs' and Court's time, this Plaintiff declines to address those arguments already considered by this Court.

4. The legal description prepared by Plaintiffs' surveyor reflects the Court's findings that Harry Clark did not intend to convey any property north of the fence line to the Defendants Bakers' predecessors, the Johnson's. The "oddly shaped parcel" is a result of conveyances made after the death of Harry Clark.

To address Defendants' contention that the Proposed Judgment "would quiet title in a parcel of such bizarre dimensions as to refute a finding that such a conveyance was Harry Clark's intent," requires consideration of what happened to the properties at issue after the death of Harry Clark.

As the Defendants point out, the shape of the Coleman parcel has been interpreted by various surveyors as being a quadrilateral or a quadrilateral with a slight curve. Plaintiffs' surveyor also interprets the Coleman deed to have this general shape.

As interpreted by the Plaintiffs' surveyor, on the westernmost side of the Disputed Parcel is a small section that is outside of where he interprets the western boundary of the Coleman deed to be. Defendants argue that quieting title to this small section outside of the quadrilateral results "in an unsupported windfall to the Plaintiffs to land that is clearly outside that conveyed in the deed from Harry Clark." What Defendants fail to recognize is that in 1970 when Harry Clark conveyed the Plaintiffs' property to his daughter, Jean Coleman, he owned the property to the west of her parcel as well as the parcel to the south of it. Thus, the following year when he conveyed the parcel adjoining the Plaintiffs' parcel to the south to the Bakers' predecessors, the Johnson's, he intended to convey to the Johnson's only property that lay south of the fence line.

When Harry Clark died in 1975, he still owned the property to the west of the Coleman property. The undisputed testimony from a number of witnesses at trial, including several of Harry Clark's children, was that upon his death, his remaining property went into a trust and this property was to be sold to support his widow. Prior to selling the property, two surveys – the

1979 and 1981 Tucker surveys<sup>1</sup> – were completed to determine the parcels to be sold. The surveyor discovered a number of problems that were a result of inaccurate legal descriptions prepared by Harry Clark, including the descriptions contained in the Coleman deeds, which he noted were ambiguous. It appears that the 1981 survey and legal descriptions created at that time were meant to rectify these problems. Tucker prepared a legal description to what appears to be essentially the same parcel referred to in this lawsuit as the “Disputed Property,” including the small westernmost section that creates the odd shape objected to by Defendants<sup>2</sup>. Tucker identified the description he prepared for this parcel as Jean Coleman’s, but new deeds were never recorded.

In 1983, the Gilbertson’s purchased the parcel identified as Parcel IV on the 1979 survey. Tucker prepared a legal description for this parcel at the time he prepared the 1979 survey<sup>3</sup>. This legal description did not contain any of the property labeled as the “Disputed Property” in this lawsuit. In their answer to Plaintiffs’ Complaint, Defendants Gilbertsons specifically admitted in paragraph 1.11 that they “have no right, title or interest in the Disputed Property.” The Disputed Property has been claimed only by Defendants Bakers and Plaintiffs.

Contained within this westernmost portion of the Disputed Property at the northwest corner is where the road that leads to both the Plaintiffs’ property and the Gilbertson’s property forks. At the fork, the road leading to the Plaintiffs’ cabin then continues easterly across the Disputed Property onto the Plaintiffs’ property. It is not reasonable to assume that Harry Clark would have intended to convey this section of the property to the Bakers’ predecessors, the Johnson’s because it would break up the road leading to the Coleman property and this property would have been of no use to the Johnson’s. In determining to which party this section should be quieted, it only makes sense that it should be quieted in Plaintiffs, not to Defendants Bakers. The Court has equitable power to make such determination.

Article 5, Section 20 of the Constitution of the State of Idaho states that “[t]he district court shall have original jurisdiction in all cases, both at law and in equity, and such appellate jurisdiction as may be conferred by law.”

The Idaho Supreme Court case of *Anderson v. Whipple*, 71 Idaho 112, 227 P.2d 351 (1951), also made it clear that relief at law and in equity may be granted in the same action and

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<sup>1</sup> Surveys admitted into evidence at trial as Plaintiffs’ Exhibits 13 and 14, respectively.

<sup>2</sup> Legal description admitted into evidence at trial as Plaintiffs’ Exhibit 21.

<sup>3</sup> Deed containing legal description admitted into evidence at trial as Plaintiffs’ Exhibit 12.

that in Idaho equity's jurisdiction extends to conflicting claims to an interest in real property. In that case, the Court stated:

Under our system, legal and equitable rights may be pleaded, and relief at law and in equity may be granted, in the same action. *Addy v. Stewart*, 69 Idaho 357, 207 P.2d 498, and cases there cited; 1 Pomeroy's Equity Jurisprudence, Fifth Ed., sec. 242; *Wa Ching v. Constantine*, 1 Idaho 266.

Originally equity's jurisdiction to quiet title was strictly limited, but was greatly extended by statute in most of the states when the 'reformed' or code procedure was adopted. Some, however, still limit the action to cases where the plaintiff is in possession. But others, including Idaho, extend the jurisdiction to all suits involving conflicting claims to an estate or interest in real property whether the plaintiff be in or out of possession. Pomeroy's Code Remedies, Fifth Ed., sec. 266; 4 Pomeroy's Equity Jurisprudence, Fifth Ed., sec. 1396.

71 Idaho at 120-121, 227 P.2d at 356.

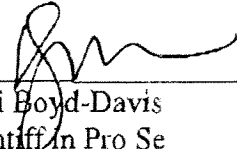
It is fitting and most reasonable that the Court, through its equitable powers, quieted title in the entire Disputed Property to the Plaintiffs despite Defendants' objection that it is "oddly shaped."

### CONCLUSION

Plaintiff Boyd-Davis respectfully requests that the Court ignore Defendants' arguments to the extent that they attempt in their "objection" to reargue issues already considered and rejected by this Court, and to the extent that they ask this Court to consider issues concerning the agreement reached in mediation between Plaintiffs and Defendants Gilbertsons, whose claims against each other have been dismissed. Plaintiff additionally requests that the Court impose sanctions on Defendant and his counsel for wasting the Court's resources on such issues.

In light of the fact that the Plaintiffs' surveyor already intends to fix the minor errors pointed out by Defendants, this Plaintiff requests that the Court accept the proposed Judgment submitted by Plaintiffs and the revised survey when it is finalized. A revised proposed Judgment wherein corrections to the minor errors to the legal description have been made is submitted herewith.

DATED this 28<sup>th</sup> day of December 2011.

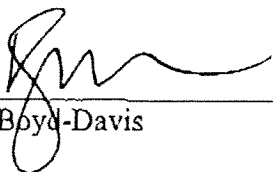
  
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Terri Boyd-Davis  
Plaintiff in Pro Se

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of December, 2011, I caused to be served a true and correct copy of the foregoing in the manner indicated:

## PLAINTIFF TERRI BOYD-DAVIS' OPPOSITION TO DEFENDANTS GILBERTSONS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND RELEASE LIS PENDENS

Toby McLaughlin Berg & McLaughlin, Chtd. 414 Church Street, Ste 203 Sandpoint, ID 83864 <i>Attorney for Defendants Timothy and Carol Baker &amp; Nellie and James Gilbertson</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-263-7557
Brian Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
Jean Coleman 2902 N. 5 <sup>th</sup> Ave. Coeur d'Alene, ID 83814 <i>Plaintiff in Pro Se</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:

  
\_\_\_\_\_  
Terri Boyd-Davis

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

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MARIE SCOTT  
CLERK DISTRICT COURT

DEPUTY

D. TOBY McLAUGHLIN, ISB No. 7405  
Berg & McLaughlin, Chtd.  
414 Church Street, Ste 203  
Sandpoint, ID 83864  
Telephone: (208) 263-4748  
Facsimile: (208) 263-7557

*Attorneys for Defendants Gilbertson and Baker*

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERRI BOYD-DAVIS and BRIAN F. DAVIS,  
husband and wife; and JEAN L. COLEMAN, an  
individual,

Plaintiffs,

vs.

MARY PANDREA, an individual; TIMOTHY  
BAKER and CAROL BAKER, husband and  
wife; JAMES GILBERTSON and NELLIE  
GILBERTSON, husband and wife; JOHN  
PANDREA, an individual; and DOES 1-50,  
inclusive,

Defendants.

NO. CV 2010-00703

ORDER TO QUASH LIS PENDENS

THIS MATTER having come before the Court on December 21, 2011, pursuant to  
Defendants Gilbertson's Motion to Enforce Settlement Agreement and Release Lis Pendens, and  
the Court having considered the pleadings of record, and arguments of the parties as well as the  
files and records herein, and good cause appearing.

NOW, THEREFORE it is ordered, adjudged and decreed that:

The Plaintiff Lis Pendens is hereby quashed in the above referenced matter.

0549

DATED this 4<sup>th</sup> day of January, 2012.

  
STEVE VERBY  
District Judge

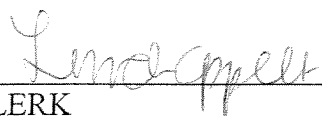
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**CLERK'S CERTIFICATE OF SERVICE**

On January 4, 2012, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Terri Boyd-Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
Brian F. Davis 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
Jean L. Coleman 12738 N. Strahorn Rd. Hayden, ID 83835 <i>Plaintiff</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
John Pandrea P.O. Box 1052 Mountain View, HI 96721 <i>Pro Se Defendant</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
Toby McLaughlin BERG & McLAUGHLIN 414 Church Street, Ste 203 Sandpoint, ID 83864  <i>Attorneys for Defendants Baker and Gilbertson</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____

  
CLERK

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2012 JAN -6 P 12:38

MAUREN COTT  
CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

**TERRI BOYD-DAVIS and BRIAN F. DAVIS,** )  
**husband and wife; and JEAN L. COLEMAN,** )  
**an individual,** )

**Plaintiffs,** )

**vs.** )

**MARY PANDREA, an individual; TIMOTHY** )  
**BAKER and CAROL BAKER, husband and** )  
**wife; JAMES GILBERTSON and NELLIE** )  
**GILBERTSON, husband and wife; JOHN** )  
**PANDREA, an individual; and DOES 1-50,** )  
**inclusive,** )

**Defendants.** )

**CASE NO. CV-2010-0000703**

**AMENDED  
ORDER TO QUASH LIS PENDENS**

**TIMOTHY BAKER and CAROL BAKER,** )  
**husband and wife; and JAMES GILBERTSON** )  
**and NELLIE GILBERTSON, husband and wife,** )

**Counterclaimants,** )

**vs.** )

**TERRI BOYD-DAVIS and BRIAN F. DAVIS,** )  
**husband and wife; and JEAN L. COLEMAN,** )  
**an individual,** )

**Counterdefendants.** )

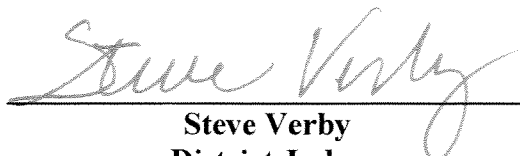


This matter came before the Court on December 21, 2011, upon Defendants James and Nellie Gilbertsons' Motion to Enforce Settlement Agreement and Release Lis Pendens. On January 4, 2012, an Order to Quash Lis Pendens was entered.

NOW, THEREFORE, the January 4, 2012, Order is hereby amended to state that the plaintiffs' lis pendens is quashed in the above referenced matter only as it pertains to Defendants James and Nellie Gilbertson.

IT IS SO ORDERED.

DATED this 6<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
Steve Verby  
District Judge

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid,  
this 9 day of January, 2012, to:

Terri Boyd-Davis  
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Deputy Clerk